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1
MINING LAWS AND FORMS:

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70d A Compilation of the Statutes

OF THE

STATE OF CALIFORNIA,

IN REFERENCE TO

Mining Corporations, Assessments, Canal Companies,
Mineral Lands, and Conveyances
of Mining Claims,

TOGETHER WITH FORMS FOR THE

INCORPORATION OF MINING COMPANIES,

AND A DIGEST OF

Decisions of the Supreme Court,

RELATIVE TO MINING CORPORATIONS AND MINING INTERESTS.

COMPILED BY H. B. CONGDON.

[SECOND EDITION.]

SAN FRANCISCO:

H. H. BANCROFT AND COMPANY.

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PREFACE.

THE present volume contains all the laws and decisions which relate to Mining Corporations in the State of California; also the necessary forms used in the incorporation of Mining Companies. It is published because of the great necessity for such a work. Many thousands of men in California and Nevada Territory are directly engaged in mining, and thousands more are owners of mining stocks; many millions of capital are invested in them and nearly the whole business of California and Nevada Territory is based on mining interests, yet comparatively few persons know anything definite about the laws which govern these great interests. These laws are simple and easily understood.

The professional man will find the present volume of great convenience, as all the mining laws are compiled in their proper order, and the decisions of the Supreme Court bearing on the subject are arranged under appropriate heads. The most approved forms used in the formation of companies and a full and complete index are appended, and there will be no occasion for looking beyond the present volume for any law, decision, or form which relates to the subject.

To the great number of individuals who are members of incorporated Mining Companies and owners of mining stock, as well as to those who may hereafter become interested in like

companies, this little compilation presents an opportunity of acquiring a perfect knowledge of the laws which govern the subject of their interests.

To persons who may desire to form Mining Companies it gives complete instruction and will enable them to commence and perfect their organization without legal advice or assistance.

H. B. C.

SAN FRANCISCO, July, 1863.

CONTENTS.

	Page.
An Act to provide for the formation of Corporations for certain purposes.—Passed April 14th, 1853.....	7
An Act supplementary to an Act entitled “An Act to provide for the formation of Corporations for certain purposes,” passed April 14th, 1853.—Passed March 27th, 1857.....	19
An Act in reference to Corporations organized in this State for the purpose of Mining out of this State.—Passed March 5th, 1861.....	22
An Act to authorize the incorporation of Canal Companies and the construction of Canals.—Passed May 14th, 1862	24
An Act to protect Owners of Growing Crops, Buildings, and other Improvements in the Mining Districts of this State.—Passed April 25th, 1855.....	26
An Act to provide for the Conveyance of Mining Claims.—Passed April 13th, 1860.....	28
DECISIONS OF SUPREME COURT—	
Certificate of Incorporation.....	31
Assignment and Transfer of Stock.....	32
Powers and Liabilities of Corporations.....	34
Right of surviving Partner.....	39
Actions.....	40
Agricultural and Mineral Lands.....	45
Rights of Miners, etc.....	53
Ditches, Canals, River Claims, etc.....	59
Mining Rules, Customs, etc.....	63
Conveyance.....	71
Taxation.....	72

	Page.
APPENDIX. (FORMS.)—	
Certificate of Incorporation.....	77
Trust Deed.....	79
By-Laws.....	81
Power of Attorney to receive Certificates of Stock...	86
Power of Attorney to vote at Meetings of Stockhold- ers.....	86
Index to Statutes.....	87
Index to Decisions.....	91

THE
MINING CORPORATION LAW
OF THE STATE OF CALIFORNIA.

*AN ACT to provide for the formation of Corporations
for certain Purposes.*

[Passed April 14th, 1853—Wood's Dig. pp. 119, 906; Statutes 1853,
p. 87; Statutes 1855, p. 205.]

1. SECTION 1. (*As amended by Act of April 10th, 1858—Stat. 1858, p. 133.*) Corporations for manufacturing, mining, mechanical, wharfing and dockage, chemical or agricultural purposes, or for the purpose of engaging in any species of trade or commerce, foreign or domestic, may be formed according to the provisions of this act; such corporations and members thereof being subject to all the conditions and liabilities herein imposed, and to none others; *provided*, that nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land, or to authorize an individual member of such company or association, in his corporate capacity, to hold, own or possess a number of acres to exceed eighty; and *provided further*, that no corporation formed under the provisions of the said

Act of April 14th, 1853, except those formed for agricultural purposes, shall own or hold possession of more real estate than shall be actually necessary for the prosecution of the business for which it was incorporated; and *provided further*, that no corporations, formed for agricultural purposes, shall be allowed to hold any mineral lands under the provisions of this act; *provided*, that no contract valid in law, or right sacred in equity, shall be impaired by the retroactive force of the section; *provided*, that nothing in this section shall be so construed as to authorize a company formed under it to own or hold possession of more than fourteen hundred and forty acres of land.

2. SEC. 2. (*As amended by Act of March 7th, 1859—Stat. 1859, p. 93.*) Any three or more persons who may desire to form a company for any one or more of the purposes specified in the preceding section, may make, sign, and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the County Clerk of the county in which the principal place of business of the company is intended to be located, and a certified copy thereof, under the hand of the Clerk and seal of the County Court of said county, in the office of the Secretary of State, a certificate in writing, in which shall be stated the corporate name of the company, the objects for which the company shall be formed, the amount of its capital stock, the time of its existence, not to exceed fifty years, the number of shares of which the stock shall consist, the number of trustees and their names, who shall manage the concerns of the company for the first three months, and the names of the city, or town, and county, in which the principal place of business of the company is to be located.

3. SEC. 3. A copy of any certificate of incorporation, filed in pursuance of this act, and certified by the County Clerk of the county in which it is filed, or his deputy, or by the Secretary of State, shall be received in all Courts and places as presumptive evidence of the facts therein stated.

4. SEC. 4. When the certificate shall have been filed, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in the certificate, and by their corporate name have succession for the period limited and power: *First*, to sue and be sued in any Court; *Second*, to make and use a common seal, and alter the same at pleasure; *Third*, to purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require; *Fourth*, to appoint such officers, agents, and servants, as the business of the corporation shall require; to define their powers, prescribe their duties, and fix their compensation; *Fifth*, to require of them such security as may be thought proper for the fulfillment of their duties, and to remove them at will; except that no trustee shall be removed from office unless by a vote of two-thirds of the whole number of trustees, or by a vote of a majority of the trustees, upon a written request signed by stockholders of two-thirds of the whole stock; *Sixth*, to make by-laws not inconsistent with the laws of this State for the organization of the company, the management of its property, the regulation of its affairs, the transfer of its stock, and for carrying on all kinds of business within the objects and purposes of the company.

5. SEC. 5. The corporate powers of the corporation shall be exercised by a Board of not less than three

trustees, who shall be stockholders in the company, and a majority of them citizens of the United States, and residents of this State, and who shall, after the expiration of the term of the trustees first selected, be annually elected by the stockholders at such time and place, and upon such notice and in such mode as shall be directed by the by-laws of the company; but all elections shall be by ballot, and each stockholder, either in person or by proxy, shall be entitled to as many votes as he owns shares of stock; and the persons receiving the greatest number of votes shall be trustees. When any vacancy shall happen among the trustees by death, resignation or otherwise, it shall be filled for the remainder of the year in such manner as may be provided by the by-laws of the company.

6. SEC. 6. If it should happen, at any time, that an election of trustees shall not be made on the day designated by the by-laws of the company, the corporation shall not for that reason be dissolved, but it shall be lawful on any other day to hold an election for trustees, in such manner as shall be provided for by the by-laws of the company; and all acts of trustees shall be valid and binding upon the company until their successors shall be elected.

7. SEC. 7. A majority of the whole number of trustees shall form a Board for the transaction of business, and every decision of a majority of the persons duly assembled as a Board, shall be valid as a corporate act.

8. SEC. 8. The first meeting of the trustees shall be called by a notice, signed by one or more of the persons named trustees in the certificate, setting forth the time and place of the meeting, which notice shall be either delivered personally to each trustee, or published at least ten days in some newspaper of the county in

which is the principal place of business of the corporation, or if no newspaper be published in the county, then in some newspaper nearest thereto.

9. SEC. 9. The stock of the company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no transfer shall be valid, except between the parties thereto, until the same shall have been so entered on the books of the company, as to show the names of the parties by and to whom transferred, the number and designation of the shares, and the date of the transfer.

10. SEC. 10. The trustees shall have power to call in and demand from the stockholders the sums by them subscribed, at such times and in such payments or installments as they may deem proper. Notice of each assessment shall be given to the stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, or if none is published there, in some newspaper nearest to such place. If, after such notice has been given, any stockholder shall make default in the payment of the assessment upon the shares held by him, so many of such shares may be sold as will be necessary for the payment of the assessment on all the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company; *provided*, that no sale shall be made except at public auction, to the highest bidder, after a notice of thirty days, published as above directed in this section; and that at such sale the person who will agree to pay the assessment so due, together with the expense of advertisement and the other expenses of sale, for the smallest number of whole shares, shall be deemed the highest bidder.

11. SEC. 11. Whenever any stock is held by any person as executor, administrator, guardian, or trustee, he shall represent such stock at all meetings of the company, and may vote accordingly as a stockholder.

12. SEC. 12. Any stockholder may pledge his stock by a delivery of the certificates or other evidence of his interest, but may nevertheless represent the same at all meetings, and vote accordingly as a stockholder.

13. SEC. 13. It shall not be lawful for the trustees to make any dividend except from the surplus profits arising from the business of the corporation; nor to divide, withdraw, or in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the capital stock, unless in the manner prescribed in this act; and in case of any violation of the provisions of this section, the trustees, under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, or were not present when the same did happen, shall, in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, in the event of its dissolution, to the full amount so divided, withdrawn, paid out, or reduced; *provided*, that this section shall not be construed to prevent a division and distribution of the capital stock of the company, which shall remain after the payment of all its debts, upon the dissolution of the corporation or the expiration of its charter.

14. SEC. 14. The total amount of the debts of the corporation shall not at any time exceed the amount of the capital stock actually paid in; and in case of any excess, the trustees, under whose administration the same may have happened, except those who may have caused

their dissent therefrom to be entered at large on the minutes of the board of trustees at the time, and except those who were not present when the same did happen, shall, in their individual and private capacities, be liable jointly and severally to the said corporation, and in the event of its dissolution, to any of the creditors thereof, for the full amount of such excess.

15. SEC. 15. No corporation organized under this act shall, by any implication or construction, be deemed to possess the power of issuing bills, notes, or other evidences of debt for circulation as money.

16. SEC. 16. (*As amended by Act of April 27th, 1863 —Stat. 1863, p. 736.*) Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company, contracted or incurred during the time that he was a stockholder, for the recovery of which, joint or several actions may be instituted and prosecuted. In any such action, whether joint or several, it shall be competent for the defendant or defendants, or any or either of them, on the trial of the same to offer evidence of the payment, by him or them, or any or either of them, of any debts or liabilities of such corporations, and, upon proof of such payment, the same shall be taken into account and credited to the party or parties making such payment, and judgment shall not be rendered against the party or parties defendant proving such payment for a sum exceeding the amount of his or their proportion of the debts and liabilities of the corporations, after deducting therefrom the sums proven to have been paid by him, them, or any or either of them, on account thereof.

17. SEC. 17. No person holding stock as executor, administrator, guardian, or trustee, or holding it as collateral security, or in pledge, shall be personally subject

to any liability as a stockholder of the company; but the person pledging the stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of the executor, administrator, guardian, or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in the trust fund would have been, if he had been living and competent to act and hold the stock in his own name.

18. SEC. 18. It shall be the duty of the trustees of every company incorporated under this act, to cause a book to be kept containing the names of all persons, alphabetically arranged, who are or shall become stockholders of the corporation, and showing the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; which book, during the usual business hours of the day, on every day except Sunday and the Fourth of July, shall be open for the inspection of stockholders and creditors of the company at the office or principal place of business of the company; and any stockholder or creditor shall have the right to make extracts from such book, or to demand and receive from the clerk or other officer having charge of such book, a certified copy of any entry made therein; such book or certified copy of any entry shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or against any one or more stockholders.

19. SEC. 19. If the clerk or other officer having charge of such book shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or to allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided

in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of one hundred dollars, and all damages resulting therefrom; and for neglecting to keep such book for inspection as aforesaid the corporation shall forfeit to the people the sum of one hundred dollars for every day it shall so neglect—to be sued for and recovered in the name of the people by the District Attorney of the county in which the principal place of business of the corporation is located.

20. SEC. 20. Any company incorporated under this act may, by complying with the provisions herein contained, increase or diminish its capital stock to any amount which may be deemed sufficient and proper for the purposes of the corporation; but before any corporation shall be entitled to diminish the amount of its capital stock, if the amount of its debts and liabilities shall exceed the sum to which the capital is proposed to be diminished, such amount shall be satisfied and reduced so as not to exceed the diminished amount of capital.

21. SEC. 21. Whenever it is desired to increase or diminish the amount of capital stock, a meeting of the stockholders may be called by a notice signed by at least a majority of the trustees, and published for at least four weeks in some newspaper published in the county where the principal place of business of the company is located, which notice shall specify the object of the meeting, the time and place where it is to be held, and the amount to which it is proposed to increase or diminish the capital; and a vote of two-thirds of all the shares of stock shall be necessary to an increase or diminution of the amount of the capital stock.

22. SEC. 22. If at any meeting so called a sufficient number of votes has been given in favor of increasing

or diminishing the amount of capital, a certificate of the proceedings, showing a compliance with these provisions, the amount of capital actually paid in, the whole amount of the debts and liabilities of the company, and the amount to which the capital stock is to be increased or diminished, shall be made out, signed, and verified by the affidavit of the chairman and secretary of the meeting, certified by a majority of the trustees, and filed, as required by the second section of this act; and when so filed, the capital stock of the corporation shall be increased or diminished to the amount specified in the certificate.

23. SEC. 23. Upon the dissolution of any corporation formed under this act, the trustees at the time of the dissolution shall be trustees of the creditors and stockholders of the corporation dissolved, and shall have full power and authority to sue for and recover the debts and property of the corporation, by the name of trustees of such corporation; collect and pay the outstanding debts; settle all its affairs, and divide among the stockholders the money and other property that shall remain after the payment of the debts and necessary expenses.

24. SEC. 24. Any corporation formed under this act may dissolve and disincorporate itself by presenting to the County Judge of the county in which the meetings of the trustees are usually held, a petition to that effect, accompanied by a certificate of its proper officers, and setting forth that at a general or special meeting of the stockholders called for that purpose, it was decided by a vote of two-thirds of all the stockholders to disincorporate and dissolve the corporation; notice of the application shall then be given by the clerk, which notice shall set forth the nature of the application, and shall specify the time and place at which

it is to be heard, and shall be published in some newspaper of the county once a week for four weeks, or if no newspaper is published in the county, by advertisement posted up for thirty days in three of the most public places in the county. At the time and place appointed, or any other to which [it] may be postponed by the Judge, he shall proceed to consider the application, and, if satisfied that the corporation has taken the necessary preliminary steps, and obtained the necessary vote to dissolve itself, and that all claims against the corporation are discharged, he shall enter an order declaring it dissolved.

25. SEC. 25. The fifth chapter of "An Act concerning Corporations," passed April 22d, 1850, is repealed; but this repeal shall not be construed to destroy the existence of any company already formed under the provisions of said chapter, nor to affect any right acquired or liability incurred under the same; but as to all such companies, the provisions of said chapter shall continue in full force, except in those instances in which any company heretofore incorporated may avail itself of the provisions of the next section of this act.

26. SEC. 26. Any company incorporated under the said fifth chapter of "An Act concerning Corporations," passed April 22d, 1850, may continue its corporate existence under this act by adopting a resolution to that effect by a vote of two-thirds of all the stockholders, and filing a certificate thereof, signed by its proper officers, in the office of the Secretary of State and of the County Clerk of the county in which is located the principal place of business of the corporation. From the time of filing the certificate, the corporation shall be subject only to the provisions of this act, but the change so made shall not affect any right acquired or liability incurred previously by the corporation.

27. SEC. 27. Corporations formed under this act, and the members thereof, shall not be subject to the conditions and liabilities contained in an act entitled "An Act concerning Corporations," passed April 22d, 1850.

SUPPLEMENTARY ACT.

AN ACT supplementary to an Act entitled "An Act to provide for the formation of Corporations for certain purposes," passed April 14th, 1853.

[Approved March 27th, 1857.—Wood's Dig. p. 123; Stat. 1857, p. 121.]

28. SECTION 1. It shall be the duty of the trustees of every company, incorporated under this act for the purpose of ditching, mining, or conveying water for mining purposes, to cause a book to be kept, containing the names of all persons, alphabetically arranged, who are, or shall become stockholders of the corporation, and showing the number and designation of shares of stock held by them respectively, and the time when they respectively became the owners of such shares; also a book or books, in which shall be entered at length, in a plain and simple manner, all by-laws, orders, and resolutions of the company and board of trustees, and the manner and time of their adoption, which books, during the business hours of the day, Sundays and Fourth of July excepted, shall be open for the inspection of stockholders and the creditors of the company, each individual stockholder, and their duly authorized agents and attorneys, at the office or principal place of business of the company; *provided*, that the office and books of every such company shall be kept, and the books of the company shall be open, as aforesaid, in the county in which

their business is transacted, and every stockholder or creditor, as aforesaid, or their agents, or attorneys shall have the right to make extracts from such books, or upon payment of reasonable clerk's fees therefor, to demand and receive from the clerk, or other officer having the charge of such books, a certified copy of any entry made therein; such book, or certified copy of any entry, shall be presumptive evidence of the facts therein stated, in any action or proceeding against the company, or any one or more stockholders.

29. SEC. 2. If the clerk or other officer having charge of such book, shall make any false entry, or neglect to make any proper entry therein, or shall refuse or neglect to exhibit the same, or allow the same to be inspected, or extracts to be taken therefrom, or to give a certified copy of any entry therein, as provided in the preceding section, he shall be deemed guilty of a misdemeanor, and shall forfeit and pay to the party injured a penalty of two hundred and one dollars, and all damages resulting therefrom, to be recovered in any court of competent jurisdiction in this State; and for neglect to keep such book for inspection, and at the place provided for in last section, the corporation shall forfeit to the people of the State of California the sum of two hundred and one dollars for every day they shall so neglect; to be sued for and recovered before any court of competent jurisdiction in the county in which the principal business of such company is transacted; and it shall be the duty of the District Attorney within and for such county to prosecute such action, in the name of and for the benefit of the people of the State of California. And it is further provided, that in case any such incorporated company shall refuse or neglect, for the space of one full year after the passage of this act, to

comply with the provisions of this and the preceding section, then, upon the showing of such facts, by petition of any person aggrieved thereby, and due proof thereof, before the County Judge of the county in which such company's principal business is transacted, after such company shall have been duly notified thereof, by summons, to be issued by said Judge, citing such company to appear before such Judge, at a time and place therein mentioned, which shall not be less than ten or more than thirty days from the date of such summons, such company shall, by said Judge, be declared and decreed to be disincorporated, so far as to deprive said company of all the privileges of this act, but in no manner to affect the remedy of all persons against such company, to be exercised as this act provides ; *provided*, that nothing contained in the provisions of this section, concerning the disincorporating of such companies, shall be so construed as to prevent the enforcement of the other remedies in this section mentioned, at any time after the passage of this act, except as herein provided.

ASSESSMENTS.

AN ACT in reference to Corporations organized in this State for the purpose of Mining out of this State.

[Passed March 5th, 1861—Stat. 1861, p. 41.]

30. SECTION 1. That it may be lawful for any corporation organized in this State, under the laws of this State, for the purpose of mining, or carrying on mining operations without this State, whose business office is in this State, to levy assessments upon the capital stock thereof to pay the debts, future or present, of said corporation, or to carry on the business of said corporation ; *provided*, the same shall be equal and uniform, and at no one time exceed five per cent. of the capital stock, and such levy, or assessment, shall constitute a valid and binding obligation upon the holders of such stock to pay the sum so assessed against the stock so held. Notice of each such call, or assessment, shall be given to the respective stockholders personally, or shall be published once a week for at least four weeks in some newspaper published at the place designated as the principal place of business of the corporation, and also in some newspaper published nearest to the point where said mining operations are being carried on. If, after such notice has been given, any stockholder shall make

default in the payment of such call, or assessment, as to the shares of stock held by him, so many of such shares may be sold as will be necessary for the payment of the call, or assessment, on the shares held by him. The sale of said shares shall be made as prescribed in the by-laws of the company ; *provided*, that no sale shall be made except at public auction to the highest bidder, after a published notice of thirty days, published as above directed ; and that at such sale the person who will agree to pay the call, or assessment, so due, together with the expense of advertisement and the other expenses of the sale for the smallest number of whole shares, shall be deemed the highest bidder.

CANAL COMPANIES.

AN ACT to authorize the Incorporation of Canal Companies, and the Construction of Canals.

[Passed May 14th, 1862—Stat. 1862, p. 540.]

31. SECTION 1. Corporations may be formed, under the provisions of an act entitled “An Act to provide for the formation of Corporations for certain purposes,” passed April 14th, 1853, and the several acts amendatory thereof and supplemental thereto, for the following purposes: The construction of canals, for the transportation of passengers and freights, or for the purpose of irrigation or water power, or for the conveyance of water for mining or manufacturing purposes, or for all of such purposes.

32. SEC. 2. The right is hereby granted to any company organized under the authority of this act, to construct all works necessary to the objects of the company, to make all surveys necessary to the selection of the best site for the works, and of the lands required therefor, and to acquire all lands, waters not previously appropriated, and other property necessary to the proper construction, use, supply, maintenance, repairs, and improvements, of the works, in the manner and by the mode of proceedings prescribed in an act entitled “An Act to provide for the Incorporation of Railroad Com-

panies, and the Management of the affairs thereof, and other matters relating thereto," passed May 20th, 1861. (For the Railroad Act hereby referred to see Statutes of 1861, page 607.)

33. SEC. 3. Every company organized as aforesaid shall have power, and the same is hereby granted, to make rules and regulations for the management and preservation of their works not inconsistent with the laws of this State, and for the use and distribution of waters and the navigation of the canals, and to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the Board of Supervisors of the county or counties in which the work is situated, but which shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent. per month upon the capital actually invested.

34. SEC. 4. Every company organized under the authority of this act shall construct, and keep in good repair at all times, for public use, across their canal, all of the bridges that the Board of Supervisors of the county or counties in which such canal is situated shall require; said bridges being on the lines of public highways, and necessary for public use in connection with such highways.

35. SEC. 5. The provisions of this act shall not apply to the counties of Nevada, Placer, Amador, Sierra, Klamath, Del Norte, Trinity, Butte, Plumas, Calaveras, and Tuolumne.

FOR THE PROTECTION OF GROWING CROPS, BUILDINGS, ETC.

AN ACT to protect Owners of Growing Crops, Buildings and other Improvements in the Mining Districts of this State.

[Passed April 25th, 1855.—Wood's Dig. p. 54; Stat. 1855, p. 145.]

36. SECTION 1. No person shall, for mining purposes, destroy or injure any growing crops of grain or garden vegetables growing upon the mineral lands of this State, nor undermine or injure any house, building, improvement, or fruit trees, standing upon mineral lands and the property of another, except as hereinafter provided.

37. SEC. 2. Whenever any person, for mining purposes, shall desire to occupy or use any mineral lands of this State, then occupied by such growing crops of grain, garden vegetables, fruit trees, houses, buildings, or other improvements, property of another, such person shall first give bond to the owner of the growing crop, building, fruit trees, or other improvement, to be approved by a Justice of the Peace of the township, with two or more sufficient sureties, in a sum to be fixed by three disinterested citizens, householders of the township, one to be selected by the obligor, one by the

obligee, and one by a Justice of the Peace of the township, conditional that the obligor shall pay to the obligee any and all damages which said obligee may sustain in consequence of the destruction by the obligor, or those in his employ, of the growing crops, fruit trees, improvements, or buildings of the obligee; *provided*, that the word improvements in this act shall be construed to mean any superstructure on said farm, ranch or garden, and nothing more.

38. SEC. 3. If any person or persons shall violate the provisions of the first and second sections of this act, he or they shall be deemed guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction, shall be fined in a sum not exceeding two hundred dollars, nor less than fifty dollars, or by imprisonment in the County Jail of said county not exceeding three months, either or both, at the discretion of the Court; *provided*, nothing in this act shall prevent miners from working any mineral lands in this State, after the growing crops on the same are harvested.

CONVEYANCE OF MINING CLAIMS.

AN ACT to provide for the Conveyance of Mining Claims.

[Passed April 13th, 1860.—Wood's Dig. p. 896; Stat. 1860, p. 175.]

39. SECTION 1. Conveyances of mining claims may be evidenced by bills of sale or instruments in writing not under seal, signed by the person from whom the estate or interest is intended to pass, in the presence of one or more attesting witnesses; and also all conveyances of mining claims heretofore made by bills of sale or instruments in writing, not under seal, shall have the same force and effect as *prima facie* evidence of sale, as if such conveyances had been made by deed under seal; *provided*, that nothing in this act shall be construed to interfere with or repeal any lawful local rules, regulations, or customs, of the mines in the several mining districts of this State; and, *provided further*, every such bill of sale or instrument in writing shall be deemed and held to be fraudulent and void as against all persons except the parties thereto, unless such bill of sale or instrument in writing be accompanied by an immediate delivery to the purchaser, of the possession of the mining claim or claims therein described, and be followed by an actual and continued change of the posses-

sion thereof, or unless such bill of sale or instrument in writing shall be acknowledged and recorded as required by law in the case of conveyances of real estate.

40. SEC. 2. This act shall apply to gold mining claims only. (*This section was repealed by Act of March 26th, 1863—Stat. 1863, p. 98.*)

DECISIONS
OF
THE SUPREME COURT
OF THE STATE OF CALIFORNIA.

CORPORATIONS.

Certificate of Incorporation.

41. The existence of a corporation, formed under a general statute, requiring certain acts to be done before the corporation can be considered *in esse*, or its transactions be valid, must be proved by showing, at least, a substantial compliance with the requirements of the statute. (*Mokelumne Hill C. & M. Co. v. Woodbury*, 14 Cal., 424.)

42. The omission of such acts as are declared necessary steps in the process of incorporation will be fatal, even collaterally, when the fact of incorporation can be questioned. (*Id.*)

43. But as to such other acts required of the persons seeking to become incorporated, but not made prerequisites to the assumption of corporate powers, the corporation is responsible only to the Government in a direct action of forfeiture. (*Id.*)

44. Under our law, corporations have a legal existence from the date of filing the certificate of incorporation in the County Clerk's office. (*Id.*)

45. That a duplicate certificate is not filed in the

office of the Secretary of State, is matter between the corporation and the State, and not necessary to be shown on the issue of corporation or no corporation in suits against third persons. (*Id.*)

46. Where the certificate of incorporation states that San Francisco is "the place of business," instead of "the principal place of business:" *Held*, to be mere technical error, not invalidating the charter. (*Ex parte Spring Valley Water Works*, 17 Cal., 132.)

Assignment and Transfer of Stock.

47. Under the twelfth section of the Act concerning Corporations, passed April 22d, 1850, no transfer of stock is good against third parties, unless the transfer be made on the books of the company. (*Weston v. Bear River and Auburn W. & M. Co.*, 5 Cal., 186.)

48. Where a *femme sole* became the owner of shares in a company, and afterwards marries, and after marriage the husband and wife execute an indorsement on the certificate of stock, purporting to sell the same to A, without any privy examination of the wife, and there being at the time no inventory of the separate property of the wife on record: *Held*, that such sale was void, as against a subsequent purchaser, under an instrument duly signed and acknowledged. (*Selover v. American Russian Com. Co.*, 7 Cal., 266.)

49. Where A received an assignment of stock in a corporation, and the stock was subsequently attached under a judgment against the vendor, and afterwards the stock was regularly transferred to A, who then obtained an assignment of the judgment under which the stock was attached: *Held*, that the assignment of the judgment at once merged the lien in the higher right; and that A, as regarded third parties, became the absolute owner of the stock. (*Strout v. Natoma W. & M. Co.*, 9 Cal., 78.)

50. A railroad company cannot refuse to enter the transfer of stock in the company on their books on the ground that the assignor of the stock is indebted to the

company, unless the company had a lien upon the stock at the date of its transfer. (*People v. Crockett*, 9 Cal., 112.)

51. Where shares of stock in a corporation have been regularly transferred as security for a loan, the mortgagee is the only proper garnishee in a suit against the mortgagor, and attachment on his interest in the corporation. (*Edwards v. Beugnot*, 7 Cal., 162.)

52. A person who has been a stockholder in an incorporated company, but ceased to be such holder before suit was brought, is a competent witness in an action in the name of such company. (*Tuolumne County W. Co. v. Columbia and Stanislaus W. Co.*, 10 Cal., 193.)

53. Where from an instrument transferring shares of stock as security for a note, and from other circumstances, the transaction is clearly a loan, a clause of foreclosure on non-payment, or a provision that the mortgagee may take the property for the debt, does not make the instrument any the less a mortgage. (*Smith v. '49 and '56 Quartz M. Co.*, 14 Cal., 242.)

54. Where stock is transferred to secure a debt, and is still in the hands of the transferee, and plaintiff avers that the stock is worth more than the debt, and that defendant has received from dividends more than enough to pay it, equity has jurisdiction to compel an account, prevent a transfer, and direct a retransfer and delivery of the stock. (*Ib.*)

55. The clause in such instrument "I hereby sell, transfer, and set over all my right, title, and interest to the said stock, provided I fail to pay the above sum on the day the same becomes due and payable," does not make it a conditional sale, there being no money given or agreed to be given for the stock, and no agreement to take it at any price at the time of the contract. (*Ib.*)

56. A mortgagee of stock in such case does not get an absolute title to the stock by the mere default of payment of the mortgage debt. (*Ib.*)

57. Under the Chattel Mortgage Act of 1857, a mortgage of shares of stock in an incorporated company is valid without a transfer on the books of the company, as is required by the Corporation Act of 1853, relative

to pledges of stock by delivery of the certificates. The act of 1853 has no effect on the act of 1857. (*Ede v. Johnson*, 15 Cal., 53.)

58. At one time, seven shares of stock in a company are pledged by defendant to plaintiff, as security for a note of defendant then executed. At another time, twenty more shares are pledged as security for another note of defendant then executed. In suit on the notes, and for sale of the stock, etc., the judgment was for the amount of the notes, and directed a sale of all the shares of stock, and an application of the proceeds to the payment of the judgment: *Held*, that the judgment was wrong so far as it ordered a sale of the stock in gross, and an application of the proceeds to the entire indebtedness. (*Mahoney v. Caperton*, 15 Cal., 313.)

59. A party who purchases at Sheriff's sale stock of a corporation, knowing that the certificates of such stock have been hypothecated, is chargeable with notice of the fact, and takes subject to the claim of pledgee. (*Weston v. Bear River Co.*, 6 Cal., 425.)

60. Neither the Incorporation Act of 1850, nor that of 1853, was intended to cover such a case, but to apply only to transfers and purchases in good faith, without notice. (*Id.*)

61. Plaintiff assigns to defendant, September 22d, two shares of stock in a mining company, stating in the assignment, "I authorize the transfer to him, (defendant) with all the dividends made after the morning of the 23d of September." Both parties expected a dividend on Monday, the 22d. The trustees did not, in fact, declare dividends until between noon and one o'clock on Tuesday: *Held*, that the dividends belonged to plaintiff; and that parol evidence was admissible to explain the transaction and point out its meaning. (*Brewster v. Lathrop*, 15 Cal., 21.)

Powers and Liabilities of Corporations.

62. The power to issue bills or notes as a circulating medium is expressly excluded by the statute; the right to issue them in all other proper cases must be in-

ferred as incident to the expressed powers or objects of the corporation. (*Smith v. Eureka Flour Mills*, 6 Cal. 1.)

63. The express powers of a corporation must be exercised in the manner pointed out by the statute, but the powers merely incident thereto may be exercised by its officers or agents. (*Id.*)

64. Where the answer in a suit against a corporation, on its note, relies simply on the want of power of the corporation to issue notes, the defendant cannot afterwards object that the plaintiff has not shown that the officers executing the note were empowered by the corporation to do so. (*Id.*)

65. Neither the general incorporation act, nor the act concerning plank roads and turnpikes, gives any exclusive privileges to the corporation first established. Others may build a road on or near the same line of travel. (*Indian Cañon Road Co. v. Robinson*, 13 Cal. 520.)

66. Where the charter of a hospital was repealed and a charter granted to the new one, and the officers of the former were directed to deliver to the trustees of the latter "all the property, real and personal, held by them in trust and for the old institution, and that the latter should pay out of the funds in its hands all the debts owing by the old one: *Held*, that the new corporation was bound to pay all such debts, without regard to the sufficiency of the fund derived from the corporation. (*Johnson v. State Marine Hospital*, 2 Cal. 319.)

67. N., the president and managing agent of a corporation for ditch and mining purposes, and who was vested by a resolution of the company, with discretionary powers as to "all matters pertaining to the prosecution of the projects of the company," and who had been in the habit of making such contracts as he deemed necessary for the good of the corporation, purchased of plaintiff and one S. in the name and for the use of the corporation a house, to be used as an office for the company, and a boarding house for the laborers employed, for three thousand dollars, five hundred dollars of which N. paid down, and gave a mortgage on the premises in the name of the corporation, to secure the balance. N. then as

agent took possession of the premises, and, subsequently, several meetings of the company were held in the house. Six weeks after the purchase, at a meeting of the trustees, a resolution was offered and rejected, declaring the contract legal and valid. Subsequently, the premises were destroyed by fire. The present plaintiff, who had obtained S.'s interest in the debt, brought suit against the corporation to recover the amount, and for a foreclosure of the mortgage: *Held*, that N. had authority to make the contract to bind the corporation; and if such authority were doubtful, the acts of the corporation amounted to a ratification of the contract. (*Shaver v. Bear River and Auburn W. and M. Co.*, 10 Cal. 396.)

68. A corporation may bind itself by a note and mortgage, made by its President and Secretary, and signed by them in their official capacity as such. (*Rowe v. Table Mountain Water Co.* 10 Cal. 441.)

69. Plaintiff and others owned and worked a mining claim from 1855 to 1858, when they formed themselves into a corporation with twenty-one shares of stock at one hundred dollars each; and from that time the claim was held as corporate property. The corporation levied assessments on the shares of stock, of which plaintiff owned one; and plaintiff failing to pay, sold his share at public auction. He now sues the corporation for an undivided one twenty-first of the mining claim: *Held*, that plaintiff has mistaken his remedy; that if the corporation had no power to forfeit his stock and hence it was improperly sold, he may maintain an action for its recovery, but not for a specific interest in the claim—not being in a position to question the title of the corporation, particularly as the property is a mining claim and could only be held by occupation and possession. (*Smith v. Maine Boys Tunnel Co.*, 18 Cal. 111.)

70. A conveyance that would come within the statute of frauds if made by an individual, if made by a corporation would be liable to the same construction, and if void in the former case would be void in the latter. (*Smith v. Morse*, 2 Cal. 524.)

71. Such conveyance will not affect the lien of a judgment regularly obtained against the grantor. (*Ib.*)

72. The clear object of the restriction of issuing bills, notes, etc., by any corporation, is to prevent them by any device from carrying on the business of banking, or in other words to prevent the formation of moneyed corporations; but it does not prevent them from issuing bills or evidences of indebtedness for moneys borrowed by them. (*Magee v. Mokelumne Hill C. & M. Co.*, 5 Cal. 259.)

73. In suits for the possession of land by ditch companies, incorporated under the Act of April 14th, 1853, by the fourth section of which they are authorized "to purchase, hold, sell, and convey such real and personal estate as the purposes of the corporation shall require," the defendants cannot question the necessity of such lands for the purposes of the corporation. This is matter between the Government and the corporation. (*Natoma W. & M. Co. v. Clarkin*, 14 Cal. 544.)

74. The policy of this State has altered the rigidity of the common law, which disabled a corporation from making a contract except under its corporate seal. (*Smith v. Eureka Flour Mills*, 6 Cal. 6.)

75. Under the laws of this State, the power of corporations to create debts is treated as an incident to the express powers, and not as in itself one of the express powers. (*Ib.*)

76. All corporations by the general act have power to make by-laws for the "organization of the company," the "management of its property," the "regulation of its affairs, and for carrying on all kinds of business within the objects and purposes of the company," in which there is no reason to exclude the right of making promissory notes. (*Ib.*)

77. Where the promissory note of a corporation, executed by its officers, provides that only the assets of the corporation, and none of the property of stockholders, shall be liable, the corporation cannot raise the objection as effecting its own liability. (*Ib.*)

78. An incorporated company is not bound by the acts or admissions of its members, unless acting by its

express authority. (*Shay v. Tuolumne Co. W. Co.*, 6 Cal. 73.)

79. A corporate act is not essential in all cases to fasten a liability, and if it were necessary, the law would sometimes presume, in order to uphold fair dealing and prevent gross injustice, the existence of such act, and estop the corporation from denying it. (*San Francisco Gas Co. v. City of San Francisco*, 9 Cal. 453.)

80. Where the contract is executory, the corporation cannot be held bound unless the contract is made in pursuance of the provisions of its charter; but where the contract has been executed and the corporation has enjoyed the benefit of the consideration, an implied assumpsit arises against it. (*Ib.*)

81. Where a draft is drawn by the President and Secretary of a corporation upon its Treasurer, no notice of presentation and non-payment is necessary to hold the corporation. The draft, in such case, is only an order of the corporation upon itself. (*Dennis v. Table Mountain Water Co.*, 10 Cal. 369.)

82. It does not follow, because an agent purchases property which is not absolutely necessary for the purposes of the corporation, that the latter can, after receiving the property, avoid the payment of the purchase money. (*Shaver v. Bear River and Auburn W. & M. Co.*, 10 Cal. 400.)

83. Where the President of a corporation has the alleged power to make a contract for the corporation, though his authority be doubtful, yet the subsequent acts of the company may amount to a ratification. (*Ib.*)

84. Corporations can possess or exercise such corporate powers only as are expressly given by statutes, or by the charter, and such as shall be necessary to the exercise of the powers enumerated and given. (*Dunbar v. City of San Francisco*, 1 Cal., 356. *Correas v. City of San Francisco*, 1 Cal., 452.)

85. Two corporations cannot hold as joint tenants, but may as tenants in common. (*Dewitt v. City of San Francisco*, 2 Cal., 297.)

86. Corporations are bound to follow strictly the letter of their charter, and can exercise no power unless granted to them, or absolutely necessary to carry out the power so granted. (*Smith v. Morse*, 2 Cal., 538.)

87. The word person, in its legal signification, is a generic term, and was intended to include artificial as well as natural persons. (*Douglas v. Pacific M. S. S. Co.*, 4 Cal., 306.)

88. In reference to all transactions in the nature of a contract, a corporation must be looked upon and treated as a private person, and its contracts construed in the same manner and with the like effect as those of natural persons. (*Touchard v. Touchard*, 5 Cal., 307.)

89. The Incorporation Act of 1853 does not substantially alter the Incorporation Law of 1850. (*Weston v. Bear River and Auburn W. & M. Co.*, 6 Cal., 429.)

90. If a charter confers upon a corporation a given power, and at the same time prescribes the mode of its exercise, the provisions must be held as dependent and must be construed accordingly. (*Holland v. City of San Francisco*, 7 Cal., 375.)

91. Charters of corporations are special grants of power emanating from the paramount authority. The corporation owing its existence to the law is precisely what the law makes it. (*City of Oakland v. Carpentier*, 13 Cal., 545.)

Right of Surviving Partner.

92. A surviving partner has a right to vote at an election for officers of a corporation, formed under the general incorporation act of this State of 1853, the stock in his hands as assets of the partnership, the business of the firm being unsettled. (*People v. Hill*, 16 Cal., 114.)

93. The fact that a portion of the stock voted by such surviving partner stood upon the books of the corporation at the time of the election, in the name of the deceased partner alone, does not affect the right to vote, if in fact the stock belonged to the partnership. (*Ib.*)

94. *Semble* upon principle, that the real owner of stock in such corporations is entitled to present it at the

meetings of the corporation, and the mere fact that he does not appear as the owner upon the books of the company should not absolutely exclude him from the privilege of so doing. (*Ib.*)

95. The New York cases, establishing a different doctrine, are based upon a statute making the books of the corporation the only evidence as to ownership of the stock. (*Ib.*)

Actions.

96. In an action against a corporation, a witness who was a member of the corporation when the liabilities were incurred on which the action is brought, but who had sold out before the commencement of the action, is incompetent from interest. (*McAuley v. York Mining Co.*, 6 Cal., 80.)

97. In an action against a corporation by one of its members, upon an implied contract for the value of services as Secretary, it is competent for the defendant to show that by the usage and custom of the corporation no compensation was chargeable for such services. (*Fraylor v. Sonora Mining Company*, 17 Cal., 594.)

98. If such usage existed, plaintiff's position as a member and officer of the corporation is sufficient *prima facie* evidence to charge him with a knowledge of its existence; and the inference would be that he accepted the office and performed its duties without expecting compensation. (*Id.*)

99. The code made no distinction between the rules of pleading applicable to natural persons and those applicable to artificial persons. (*S. F. Gas Co. v. San Francisco*, 9 Cal. 467.)

100. Where a decree rendered in a suit against a corporation contained a direction for the sale of the interest of individuals not parties to the suit, and from such decree the corporation alone appealed: *Held*, that the corporation could not take advantage of the error in the decree in embracing individuals. (*Dennis v. Table Mountain W. Co.*, 10 Cal., 369.)

101. In an action to restrain the issuing of bonds by

a corporation, the persons to whom the bonds are to be issued are necessary parties to such action. (*Hutchinson v. Burr*, 12 Cal., 103. *Patterson v. Supervisors of Yuba Co.*, 12 Cal., 106.)

102. Where on suit against defendants as members of a quartz company, one defendant pleads that he was not a member of the company, and the finding of the court is that the allegations of the complaint are true, and that said defendant was a member of the company as to plaintiff Parke, the finding supports a judgment for plaintiff. (*Parke v. Hinds*, 14 Cal., 417.)

103. The rule requiring all persons materially interested to be made parties to a suit is dispensed with, when it is impracticable or very inconvenient, as in cases of joint associations composed of numerous individuals. (*Gorman v. Russell*, 14 Cal., 539.)

104. Where, in an action against a corporation, the return of the Sheriff showed that he had served the summons in the action "upon James Street, one of the proprietors of the company:" *Held*, that it was not sufficient evidence of service to give the Court jurisdiction: it not appearing that Street was President, or head of the corporation, or Secretary, Cashier, or Managing Agent thereof. (*O'Brien v. Shaw's Flat and Tuolumne Canal Co.*, 10 Cal., 343.)

105. A Sheriff's return on the summons against a corporation, that he served the same on the President and Secretary of the company, is *prima facie* evidence that the persons named in the return were such officers. (*Rowe v. Table Mountain W. Co.*, 10 Cal., 441. *Wilson v. Spring Hill Quartz M. Co.*, 10 Cal., 445.)

106. A joint stock mining association was formed in New York for the purpose of mining in California, which company was to continue several years, with a prohibition against dissolution within one year after the arrival of the company in California, except on certain conditions, which had not been complied with: *Held*, that a portion of the company could not dissolve the company at their will and pleasure, but it being found impracticable to keep the company together, the Court decreed a dissolution and a distribution of the effects of the company. (*Von Schmidt v. Huntington*, 1 Cal., 70.)

107. The stock being divided into money shares and labor shares, the holders of the latter, who had contributed no capital towards the outfit of the company, had performed no labor beneficial to the company, and had their expenses to California paid out of the funds contributed by the holders of the money shares alone, and had abandoned the association, which fact, by the articles, worked a forfeiture of the labor shares: *Held*, that the assets of the company should be distributed among the holders of the money shares alone, and that the Court relieve them from the forfeiture. (*Ib.*)

108. When in a joint stock association certain parties contribute money, and hold therefor money shares, and that money is paid to defray the expenses of certain operators to California, who contribute no money, but who, after laboring for the corporation one year, shall receive certain labor shares, and the corporation is dissolved by reason of its impracticability, before operation: *Held*, that the assets should be distributed among the money shares alone. (*Ib.*)

109. The right of a member of an incorporated company to sue the corporation is undoubted. (*Barnstead v. Empire Mining Co.*, 5 Cal., 299.)

110. Where there is nothing in the constitution of a joint stock company which regulates the remedies of the shareholders as between themselves, the general law of partnership must govern them. (*Bullard v. Kinney*, 10 Cal., 63.)

111. In suit by a stockholder against a corporation and its officers, praying for their removal, and for an account and settlement of the affairs of the corporation, the decree, after a full hearing on the merits, was in accordance with the prayer, and also appointed a receiver to take charge of the property of the corporation, until the further order of the Court; collect money due or to become due it; sell certain stock, and pay the certain proceeds in accordance with the decree, etc.: *Held*, that this provision in the decree does not destroy its effect as a final decree, and that an appeal lies therefrom. (*Neall v. Hill*, 16 Cal. 145.)

112. The aid of Courts can be invoked only as

against such officers as are intrusted by law with the management of the affairs of the corporation; and as against these, the remedy is at law, and not in equity. (*Ib.*)

113. The power of removing the private or ministerial officers of a private corporation belongs to the corporation alone. Courts cannot remove such officers. (*Ib.*)

114. In suit by a stockholder in a private corporation, against the corporation and four of the trustees, who owned stock sufficient to enable them to control the business of the company, for an account and settlement of its affairs, alleging fraud and mismanagement on the part of the trustees, the Court below, by its decree, deprived one of said trustees of his salary as superintendent of the business of the corporation: *Held*, that this was error; that although such superintendent was also trustee and treasurer of the corporation, contrary to a positive provision of the by-laws; and although, in the management of the business of these officers, no attention had been paid to the by-laws and regulations of the corporation, yet as no fraud was shown, and as the superintendent had faithfully performed his duties as such, he was entitled to his salary. (*Ib.*)

115. If in such case any loss was sustained by the corporation from disregard of its by-laws and regulations, the amount of such loss would seem to be the measure of relief. (*Ib.*)

116. Hence, in this case, it was error in the Court below to appoint a receiver and decree a sale of the property and a settlement of the affairs of the corporation. Such decree necessarily results in the dissolution of the corporation, and would be doing indirectly what the Court has no power to do directly. (*Ib.*)

117. To charge the officers of a corporation with a loss sustained by a stockholder, in a diminution of the value of the stock, alleged to have been caused by their mismanagement, it should appear very clearly that the loss was occasioned by their gross negligence or willful misconduct. (*Ib.*)

118. A Court of Equity has no jurisdiction over corporations, for the purpose of restraining their operations or winding up their concerns. Such Court may compel the officers of the corporation to account for any breach of trust; but the jurisdiction for this purpose is over the officers personally, and not over the corporation. (*Ib.*)

119. Where four of the trustees of a private corporation, owning sufficient stock to control its business, conduct the business in a grossly negligent manner, systematically disregarding the by-laws, keeping no account of receipts and expenditures, failing to pay their own assessments, without any excuse: *Held*, that a stockholder may sue in equity for an account, making the corporation and said trustees alone parties—no objection being taken that all the stockholders were not parties—and the trustees will be compelled to make good any loss occasioned by their negligence or improper conduct. (*Ib.*)

120. Each corporator is a principal debtor, and not a mere surety for the corporation; and in relation to the creditors of the corporation stands on the same footing as if it were an ordinary partnership. (*Mokelumne Hill C. and M. Co. v. Woodbury*, 14 Cal. 265.)

121. Under the Constitution and laws of this State, each member of a private incorporated company is answerable personally for his proportion of the debts and liabilities of the company. (*Ib.*)

122. A member of the incorporation at the commencement of a suit brought by it, cannot become a witness for it on the trial by selling out his shares of stock after suit brought. He is personally liable for his proportion of the costs; and his competency as a witness can only be restored by actual payment of the entire costs of the case—those due and those to become due. (*Ib.*)

123. A party who permits himself to stand on the books of a water company, incorporated under the statutes of this State, as a stockholder, and holds the office of secretary—to which no person but a stockholder is eligible—is not a competent witness for the company in

an action against it for overflowing plaintiff's mining claim. He is liable for the debts of the company, and therefore interested. (*Wolf v. St. Louis Ind. Water Co.*, 15 Cal. 319.)

124. The fact that the stock was held in his name in trust for another—the transfer having been made simply to enable him to become an officer of the company—does not relieve him from responsibility. The trust in such case is only implied; and the seventeenth section of the corporation act of 1853 applies only to the trustee of an express trust. (*Ib.*)

125. The allegation that plaintiff was a corporation under the laws of this State, is sufficient to establish the right to sue under the first section of the act concerning corporations. (*Cal. Steam Nav. Co. v. Wright*, 6 Cal. 261.)

126. The code imposes upon the defendant, if a corporation, by its officers and agents, the duty of acquiring the requisite knowledge or information respecting the matters alleged in the complaint, to enable them to answer in the proper form. (*San Francisco Gas Co. v. City of San Francisco*, 9 Cal. 467.)

127. In a suit against a corporation, the summons must be served on one of the officers or agents named in the Practice Act. *Aiken v. Quartz Rock Co.*, 6 Cal. 186.)

128. Service on a party in possession of property, who does not appear to be one of the officers named, will not entitle the plaintiff to a judgment by default. (*Id.*)

Agricultural and Mineral Lands.

129. The Act of April, 1852, "prescribing the mode of maintaining and defending possessory actions on public lands in this State," gives permission to all persons to work the mines upon public lands, although they may be in the possession of another, for agricultural purposes. (*Stoakes v. Barrett*, 5 Cal., 36. *Clark v. Durál*, 15 Cal., 88.)

130. The right of the agriculturist to use and enjoy

public lands must yield to the right of the miner when gold is discovered in his land. (*Tartar v. Spring Creek W. & M. Co.*, 5 Cal., 395. *Burdge v. Underwood*, 6 Cal., 45.)

131. But this does not confer any right upon the miner to dig a ditch to convey water to his mining claim through land thus occupied. (*Id. McClintock v. Bryden*, 5 Cal., 97. *Fitzgerald v. Urton*, 5 Cal., 308.)

132. The Act of April 25th, 1855, "for the protection of growing crops and improvements in the mining districts of this State," so far as it purports to give a right of entry upon the mineral lands of this State, in cases where no such right existed anterior to its passage, is invalid. (*Gillan v. Hutchinson*, 16 Cal., 153.)

133. This Act of 1855 seems to proceed upon the idea of an absolute and unconditional right in the miner to enter upon the possessions of another for mining purposes, and the intention of the act was to limit this supposed right and not to give a right of entry in cases where no such right previously existed. (*Id.*)

134. Miners have no such absolute and unconditional right. The true rule is laid down in *Smith v. Doe*, 15 Cal., 100. *Id.*

135. In ejectment for mineral land, plaintiff averred possession of a large tract of land, including the mining land in controversy, and that he occupied the land for agricultural and mining purposes, without stating that any use was made of the particular portion held by defendants. This averment of possession, and also the averment of ouster, were insufficiently denied in the answer; but the answer averred affirmatively that, at the time defendants entered upon the ground in dispute, it was a part of the public domain of the United States, contained large and valuable deposits of gold, that they entered upon and took possession of it for mining purposes, and that they have since held and used it for such purposes only. The Court below gave judgment for plaintiff on the pleadings: *Held*, that these affirmative averments of defendants being proved, plaintiff could not recover without showing such an actual and meritorious possession and occupancy, as rendered the inter-

ference of the defendants unjust and inequitable; that he could not recover on the pleadings, because the character of his possession did not appear, the complaint not averring that this particular portion of the land was ever used by plaintiff for any purpose whatever. (*Smith v. Doe*, 15 Cal. 100.)

136. The allegation of possession is too broad to defeat the rights of a person who has, in good faith, located upon public mineral land for the purpose of mining. (*Id.*)

137. When a party enters upon mineral land for the purpose of mining, he cannot be presumed to be a trespasser, for if the land be not private property he has the right to enter upon it for that purpose; and, until it is shown that the title has passed from the Government, the statutory presumption that it is public land applies. (*Id.*)

138. Mere entry and possession give no right to the exclusive enjoyment of any given quantity of the public mineral lands of this State. (*Id.*)

139. As a general rule, the public mineral lands of this State are open to the occupancy of every person who, in good faith, chooses to enter upon them for the purpose of mining. (*Id.*)

140. But this rule has its limitations, to be fixed by the facts of each particular case. Certain possessory rights, and rights of property in the mining region, though not founded on a valid legal title, will be protected against the miner—as valuable permanent improvements, such as houses, orchards, vineyards, growing crops, etc. (*Id.*)

141. The Government of the United States will issue no patent to a preëmption claimant upon mineral land, who claims the same for agricultural purposes. (*McClintock v. Bryden*, 5 Cal., 99.)

142. The Government of this State being a Government of the people, has, as far as its action has been determined, modified the claim to the precious metals by the sovereign, and permitted its citizens and others to use the public lands for the purpose of extracting the most valuable metals from their soil. (*Id.*)

143. A person who has settled for agricultural purposes upon any of the mining lands of this State has

settled upon lands subject to the rights of miners, who may proceed in good faith to extract any valuable metal there may be found in the lands so occupied by the settler, to the least injury of the occupying claimant. (*Id.* 102.)

144. Miners have a right to dig for gold on the public lands. (*Irwin v. Phillips*, 5 Cal., 143.)

145. The miner who selects a piece of ground to work must take it as he finds it, subject to prior rights, which have an equal equity on account of an equal recognition from the sovereign power. (*Ib.*, 147.)

146. Settlers may occupy public lands and inclose the same for their immediate benefit, except in the mining regions, else the entire gold region might have been inclosed in large tracts under the pretense of agriculture and grazing. (*Tartar v. Spring Creek W. & M. Co.*, 5 Cal., 398.)

147. The right to mine for the precious metals can only be exercised upon public lands, and, although it carries with it the incidents of the right, such as the use of wood and water, those incidents also must be of the public domain. (*Ib.*)

148. The Government of the United States, in the face of the notorious occupation of the public lands in this State by her citizens—that upon those lands they have mined for gold, constructed canals, built saw mills, cultivated farms and practiced every mode of industry—has asserted no right of ownership to any of the mineral lands in the State. (*Conger v. Weaver*, 6 Cal., 556.)

149. The right, like digging gold, is a franchise, and the attending circumstances raise the presumption of a grant from the sovereign of the privilege, and every one who wishes to attain it has license from the State to do so; *provided*, that the prior rights of others are not infringed upon. (*Ib.*)

150. In an action by a company of miners to recover possession of a mining claim and damages for its detention, a person who was a member of the company at the time of the alleged detention, and who prior to the commencement of the suit, in consideration of unpaid assessments, sold his interest to his copartners in the claim,

without warranty, is not a competent witness, as he is interested in the damages sought to be recovered. (*Packer v. Heaton*, 9 Cal., 571.)

151. Mining claims are real estate, within the code defining the venue of civil actions. (*Watts v. White*, 13 Cal., 324.)

152. Upon questions as to the occupaney of public mineral land, it seems that a transfer of the occupant's right of possession may as well be by simple agreement as by deed, the vendee taking possession. (*Jackson v. F. River and Gibsonville W. Co.*, 14 Cal., 22.)

153. From an early period of our State's jurisprudence we have regarded claims to public mineral lands as titles. (*Merritt v. Judd*, 14 Cal., 64.)

154. A license to work the mines implies a permission to extraet and remove the mineral. Such liense from an individual owner can be created only by writing, and from the General Government only by Act of Congress. But Congress has adopted no specific action on the subject, and has left that matter to be controlled by its previous general legislation respecting the public domain. The supposed liense from the General Government consists in its simple forbearance. (*Boggs v. Merced M. Co.*, 14 Cal., 374.)

155. If the forbearance of the Government were entitled to any consideration, as a legal objection to the assertion of the title of the Government, it could only be so in those cases where it has been accompanied with such knowledge on its part, of the working of the mines and the removal of the mineral, as to have induced investigation and action, had this been intended or desired. Such knowledge must be affirmatively shown by those who assert a liense from forbearance. (*Ib.*)

156. How far the right of miners to go upon public mineral lands in possession of another, for the purpose of mining, must be modified to secure any rights of such possessor, reserved. (*Ib.*)

157. Neither the Act of 1858, as to the location of seminary land, nor the Act of Congress, donating it, allows mineral land to be located. (*Ib.*)

158. Miners have a right to enter upon public min-

eral land, in the occupancy of others, for agricultural purposes, and to use the land and water for the extraction of gold—the use being reasonable, necessary to the business of mining, and with just regard to the rights of the agriculturist; and this, whether the land is inclosed or taken up under the possessory Act. (*Clark v. Duval*, 15 Cal., 88.)

159. The right so to enter and mine carries with it the right to whatever is indispensable for the exercise of this mining privilege—as the use of the land and such elements of the freehold as water. (*Ib.*)

160. The presumption of a grant from the Government of mines, water privileges and the like, is to the first appropriator; but such a presumption can have no place for consideration against the superior proprietor. (*Boggs v. Merced M. Co.*, 14 Cal., 375. *Henshaw v. Clark*, 14 Cal., 464.)

161. The United States, like any other proprietor, can only exercise their right to the mineral on private property in subordination to such rules and regulations as the local sovereign may prescribe. (*Boggs v. Merced M. Co.*, 14 Cal., 376.)

162. The general course of legislation in this State authorized the inference of a license from her to the miner to enter upon lands and remove the gold, so far as the State has any right; but this license is restricted to the public lands. (*Ib.*)

163. The possession of agricultural land is *prima facie* proof of title against a trespasser; but where it is shown that the party goes on mineral land to mine, there is no presumption that he is a trespasser; and the statutory presumption that it is public land, in the absence of proof of title in the person claiming it as agricultural land, applies. (*Burdge v. Smith*, 14 Cal., 383.)

164. Mining claims are held by possession, but that possession is regulated and defined by usage and local and conventional rules; and the “actual possession,” which is applied to agricultural land, and which is understood to be a *possessio pedis*, cannot be required in case of a mining claim, in order to give a right of action for the invasion of it. (*Atwood v. Fricot*, 17 Cal. 37.)

165. A mining claim must be in some way defined as to limits, before the possession of or working upon part gives possession to any more than the part so possessed or worked. But when the claim is defined, and the party enters in pursuance of mining rules and customs, the possession of part is the possession of the entire claim. (*Id.*)

166. So if a party enters upon a mining claim *bona fide*, under color of title, as under a deed or lease, the possession of part as against any one but the true owner or prior occupant is the possession of the entire claim described by the paper; and this, though the paper did not convey the title. A third person could not invade the possession of the party taking it under such circumstances, and set up, as against him, outstanding title in a stranger with which he had no connection. (*Id.*)

167. The condition of the possessor in such instances is no worse than that of the occupant of other real estate, in which case the principle above stated applies. But this principle does not touch the case of an entry into possession in pursuance of mining rules and regulations, as for a forfeiture or abandonment, etc., but applies where possession is taken independently of such rules. (*Id.*)

168. In suit for damages for an entry upon mining claims, and for perpetual injunction, etc.: *Held*, that it was error for the Court below to charge the jury that if they believed no injury or damage was done by defendants to plaintiffs, they would find for defendants; that such charge was calculated to mislead, inasmuch as the law presumes damages from a trespass, and under the charge, the jury might have decided the case upon this want of proof of plaintiff's damages, instead of absence of proof of their title. (*Id.*)

169. In such case the error being apparent, injury from the charge to the jury is presumed, unless respondent affirmatively repels the presumption. (*Id.*)

170. Miners have no right to enter upon private lands, and subject it to such uses as may be necessary to extract the precious metals which it contains. (*Henshaw v. Clark*, 14 Cal., 460.)

171. In this State, although the larger portion of the mineral lands belong to the United States, yet defendant cannot defeat an action for mining claims, water privileges and the like, by showing the paramount title of the Government. Our Courts, in determining controversies between parties thus situated, presume a grant from the Government to the first appropriator. The presumption, though of no avail against the Government, is held absolute in such controversies. (*Coryell v. Cain*, 16 Cal., 573.)

172. A miner has no right to dig or work within the inclosure surrounding a dwelling-house, corral, and other improvements of another. (*Burdge v. Underwood*, 6 Cal., 45.)

173. There is no prohibition against locating school land warrants on any of the mineral lands in the State. (*Nims v. Johnson*, 7 Cal., 110.)

174. A party cannot, under pretense of holding land in exclusive occupancy as a town lot, take up and inclose twelve acres of mineral land in the mining district, as against persons who enter afterwards upon the land, in good faith, for the purpose of digging gold, and who do no injury to the use of the premises as a residence, or for carrying on of any commercial or mechanical business. (*Martin v. Browner*, 11 Cal., 12.)

175. Where a miner enters upon land in the possession of another, claiming the right to enter for mining purposes, he must justify his entry by showing: 1st, that the land is public land; 2d, that it contains mines or minerals; 3d, that he enters for the *bona fide* purpose of mining, and such justification must be affirmatively pleaded in the answer, with all the requisite averments to show a right under the statute, or by law, to enter. (*Lentz v. Victor*, 17 Cal., 271.)

176. A party in possession of public mineral land is entitled to hold it as against all the world, the Government excepted, if the land belong to it—subject only to the qualification that, upon land taken up for other than mining purposes, a right of entry for such purposes may attach. (*Id.*)

177. Whether in this case, even if the defense of

justification as a miner, etc., had been properly set up, defendant would have been entitled to enter, not decided. (*Id.*)

178. The eleventh section of the Act of March, 1856, "for the protection of actual settlers and to quiet land titles in this State" does not apply to miners engaged in extracting gold from quartz veins. (*Fremont v. Seals*, 18 Cal., 433.)

Rights of Miners, etc.

179. Ejectment for mining ground, the parties being owners of claims on opposite sides of the same hill. Plaintiffs were an ordinary joint stock company, or common partnership, and claimed by purchase and transfer from the original members of the company. The practice of the company was to issue to members certificates of stock, and those certificates constituted the only evidence of membership recognized by the company, transfers being made by an assignment of the certificates, and a notice thereof in the books of the company. On the trial, these certificates with the assignments were read in evidence by plaintiffs, to show their interest in the ground and their right to maintain the action, defendants objecting to them on the ground of irrelevancy, and that their execution was not proved: *Held*, that the certificates, etc., were relevant to show possession in plaintiffs, but that their execution should have been proven. (*Pennsylvania Mining Co. v. Owens*, 15 Cal., 136.)

180. In this case the Court instructed the jury: 1st, that if they found plaintiffs located their claims, as now claimed, before the location of defendants' claim, then they should find for plaintiffs; and 2d, if they found that defendants never located any claim adjoining plaintiffs' claim, then they should find for plaintiffs: *Held*, that the instructions are wrong, as violating the principle that plaintiff must recover on the strength of his own title; that defendants, having been in actual possession for a long time, were not required to show anything

beyond it until a prior and paramount right was shown in plaintiffs: that it was not essential to defendants' possession to show that they had ever formally located their claim, in accordance with any mining regulations, or that they had or claimed any other mining ground. (*Ib.*)

181. In ejectment for an interest in a mining claim, the answer being a general denial, defendant cannot defeat the action by showing the claim to be partnership property. Any rights defendant may have in the premises, growing out of the partnership, must be asserted in equity, particularly as the legal title in this case is in the plaintiff. (*Lowe v. Alexander*, 15 Cal., 296.)

182. Where in suit for a mining claim, plaintiff in his complaint states the particular facts constituting his title, and on that title seeks a recovery, and the answer denies such title, plaintiff must prove his title as averred, at least in substance, and he cannot, against defendant's objection, recover on another and different title. And where plaintiffs were permitted to prove and recover on a title other than the one set up, it was error in the Court below to refuse a new trial, the motion for which was based on affidavit of defendant that he was taken by surprise, arising out of the frame of the pleadings, and that he could have rebutted plaintiff's case but for this surprise. (*Eagan v. Delaney*, 16 Cal., 87.)

183. In an action for a mining claim, when the defendants asked for an instruction to the jury "that if the plaintiff had abandoned the claim, and did not intend to return and work it before the commencement of the suit," and the Court gave the instruction "subject to the seventeenth section of the Statute of Limitations:" Held, that the qualification of the instruction was error. (*Davis v. Butler*, 6 Cal., 511.)

184. A witness in an action for a mining claim, who is in the employ of the party in possession, at fixed wages, to be paid from the proceeds of the claim, is not incompetent when his pay is not dependent on such proceeds. (*Live Yankee Co. v. Oregon Co.*, 7 Cal. 40.)

185. A writ of injunction will issue to restrain trespass, in entering on a mining claim, and removing auriferous quartz from it, where the injury threatens to be

continuous and irreparable. (*Merced M. Co. v. Fremont*, 7 Cal. 317.)

186. The removal of gold from a mine is taking away the entire substance of the estate, and comes within that class of trespass in which injunctions are universally granted. (*Id.*)

187. Although the jurisdiction of mining claims is given to Justices' Courts, yet, if the amount in controversy is above two hundred dollars, the District Court has jurisdiction. No statute can deprive the latter Court of the jurisdiction confirmed and defined by the Constitution. (*Hicks v. Bell*, 3 Cal. 224.)

188. In a suit brought by one of the partners in a mining company against the company to recover his share, which had been sold for an alleged non-payment of an assessment, and also to recover the sum of his proportionate share of the gold taken out by the said company, the District Court has jurisdiction. (*Schupler v. Evans*, 4 Cal. 212.)

189. In a controversy between two mining companies it was competent to prove the execution of certain receipts for water purchased by the plaintiffs, as tending to show the existence of the company, and that it had actually located and was in operation at the time the receipts purport to be signed. (*Lone Star Co. v. West Point Co.*, 5 Cal. 447.)

190. Where the complaint in an action to recover possession of a mining claim in a Justice's Court, contains an allegation of injury done and a prayer for damages, the latter should be disregarded or stricken out, and the plaintiff be allowed to try his right to the claim. (*Van Etten v. Jilson*, 6 Cal. 19.)

191. Justices of the Peace have no jurisdiction in actions to recover damages in a sum over two hundred dollars, for injury to a mining claim, or for its detention. (*Van Etten v. Jilson*, 6 Cal. 19; *Small v. Gwinn*, 6 Cal. 449; *Freeman v. Powers*, 7 Cal. 105.)

192. Where a mining company, not incorporated, forms a trading copartnership with an individual under a firm name, each member of the mining company is a member of the firm. (*Rich v. Davis*, 6 Cal. 163.)

193. Where one of the mining company acted as salesman of the firm, it cannot be pretended that he was a dormant partner whose acts would not bind the firm. (*Ib.*)

194. Where parties conveyed to H. one-third interest in the lead, by deed purporting to convey in the fee simple absolute, and subsequently acquired another title: *Held*, that such subsequent acquisition inured to H.'s benefit. (*Hitchens v. Nouques*, 11 Cal. 28.)

195. The mere fact that the judgment debtor (against whom execution had been issued) was found upon the mining ground of plaintiff, did not justify the Sheriff who had the execution in going on the ground and digging up the soil and taking the gold it contained. (*Rowe v. Bradley*, 12 Cal. 230.)

196. A bill of sale of a mining claim is sufficiently proven when the handwriting of the subscribing witness, who is absent from the State, and the execution by the vendor are proven. (*Jackson v. Feather River Water Co.*, 14 Cal. 22.)

197. A steam engine and boiler, fastened to a frame of timber, bedded in the ground of a quartz ledge sufficient to make it level, with a roof or shed to protect the machinery, and used for the purpose of working the ledge, are so annexed to the freehold as to become a fixture. (*Merritt v. Judd*, 14 Cal. 59.)

198. In an action of trespass for entering upon the mining ground of plaintiff, the vendor of plaintiff is a competent witness, although part of the purchase money is still due him. (*Rowe v. Bradley*, 12 Cal. 226.)

199. Where premises containing deposits of gold are held under a patent from the United States, an injunction lies to prevent miners from excavating ditches, digging up the soil, and flooding a portion of the premises, for the purpose of extracting the gold. (*Henshaw v. Clark*, 14 Cal., 460.)

200. Such injuries are calculated to destroy the entire value of the land for all useful purposes. They are irreparable. (*Id.*)

201. Where the owner of a mining claim contracts, verbally, with J. for working it, and agrees to pay him

a certain sum out of the proceeds, and J. goes into possession, and while he is working it, the owner sells it to a third party, who takes without notice of J.'s contract, his claim is not liable to J.'s contract. (*Jenkins v. Redding*, 8 Cal. 598.)

202. Defendant killed deceased while in the act of injuring a mining claim. On the trial defendant offered to show that he was the owner, and in the lawful possession of said claim at the time of the killing. The Court refused testimony to this point : *Held*, that defendant had a right to prove his ownership of the claim for the purpose of showing his mental condition, the motives which prompted his action, and determining the character of the offense; that the ownership was part of the *res gestæ*, and should have been admitted, subject to instructions of the Court as to its legal effect, though when admitted it may not have amounted to a justification. (*People v. Costello*, 15 Cal. 350.)

203. Where two mining companies agree upon a boundary line between their claims, and subsequently other parties purchase the several interests of the two companies, with a knowledge of the boundary so fixed, both parties are concluded by it, and estopped from denying it. (*McGee v. Stone*, 9 Cal. 600.)

204. The fact that such line was fixed by a mistake as to the true boundaries makes no difference. (*Id.*)

205. Parties taking possession of a quartz lead under an agreement, cannot retain possession and refuse compliance with their agreement. (*Hutchins v. Nougues*, 11 Cal. 28.)

206. In an action for damages for diversion of water from plaintiff's ditch, the deposition of one of the owners in the ditch was taken by plaintiff, and subsequently, and before the trial, the witness conveyed his interest to plaintiff: *Held*, that such conveyance did not pass the witness' right to the damages, and hence he was incompetent as a witness. (*Kimball v. Gearheart*, 12 Cal. 27.)

207. The purchaser of a mining claim can only acquire such right or title as his vendor had at the time of sale. (*Waring v. Crow*, 11 Cal. 366.)

208. Where the Court instructed the jury, that, "where an abandonment is sought to be established by the act of the party, the intention alone governs; and, if such party leave a mining claim, with the intention not to return, his abandonment is as complete, if it exist for a minute or a second, as though it continued for years; but if he left with the intention of returning, he might do so at any time within five years: *provided*, there was no rule, usage or custom of miners, of such notorious character as to raise a presumption of an intention to abandon;" the question of abandonment was fairly left to the jury. (*Id.*)

209. Where a party's rights to a mining claim are fixed by the rules of property, which are a part of the general law of the land, they cannot be divested by any mere neighborhood custom or regulation. (*Id.*)

210. In an action of ejectment to recover an undivided interest in a mining claim, it is not necessary to make parties defendants who are in possession holding other undivided interests, and who claim no right to the interest sued for. (*Id.*)

211. Possession of one partner or tenant in common of a mining claim is the possession of all. (*Ib.*)

212. The interest of a miner in his mining claim, is property, and not having been exempted by law may be taken and sold under execution. (*McKeon v. Bisbee*, 9 Cal. 137.)

213. The pay dirt and tailings of a miner, which are the productions of his labor, are his property. (*Jones v. Jackson*, 9 Cal. 237.)

214. To suffer the tailings to flow where they list, without confinement within proper limits, is conclusive evidence of abandonment, unless there is some peculiarity in the locality which render it unnecessary to raise any artificial obstructions. (*Id.*)

215. Where a place of deposit is necessary for working a mine, the miner has the right to appropriate such ground as may be necessary for this purpose, provided, he does not interfere with existing rights. His intention to appropriate such ground must be clearly manifested by outward acts. Mere posting notices is

not sufficient. He must claim the place of deposit as such, or as a mining claim. (*Id.*)

216. If the tailings are allowed to mingle with those of other miners, this would not give a stranger a right to the mixed mass. (*Id.*)

217. Where tailings are allowed to flow upon the ground of another, he is entitled to them. (*Id.*)

218. The mines of gold and silver in the public lands are as much the property of the State, by virtue of her sovereignty, as are similar mines in the hands of private proprietors. (*Hicks v. Bell*, 3 Cal., 227.)

219. The State, therefore, has the sole right to authorize the mines to be worked, to pass laws for their regulation, to license miners, and affix such terms and conditions as she may deem proper to the freedom of their use. (*Ib.*)

220. In an action of ejectment to recover mining claims, an answer to the complaint which avers "that any rights plaintiff may have had, etc., have been forfeited by a non-compliance with the rules of the miners in the diggings embracing the claims in dispute, prior to defendant's entry," is insufficient in not setting forth the rules, customs, etc. (*Dutch Flat Co. v. Moony*, 12 Cal. 534.)

Ditches, Canals, River Claims, etc.

221. Where plaintiff's mining claim was overflowed by means of a dam erected by the defendants, the Court ordered a reduction of the dam, so as to prevent the overflow, or, if necessary, an entire abatement. (*Ramsey v. Chandler*, 3 Cal. 93.)

222. The obstruction of the water in a ravine is common injury to many at work on the ravine, who had by the necessary implication of the laws of the State which relates to mines and miners, a species of property in their mining grounds which they had a right to protect by peaceably abating the nuisance. (*Stiles v. Laird*, 5 Cal. 122.)

223. Rights of miners are to be protected in the possession of their selected localities, and the rights of

those who by prior appropriation have taken the waters from their natural beds, and by costly works to supply the necessity of gold diggers, and without which the most important interest in the mineral region would remain undeveloped. (*Irwin v. Phillips*, 5 Cal. 146.)

224. Where the plaintiff sued for an injury to his mining claim, by the breaking of defendant's canal, which was constructed prior to the location of plaintiff's claim, neither party claiming ownership of the soil, and no negligence in fact being shown, other than that which the law would presume from the breaking of the ditch: *Held*, that the rights of the parties were acquired at the dates of their respective locations, and the rule of "coming to a nuisance" may be applied. (*Tenney v. Miners' Ditch Co.*, 7 Cal. 339.)

225. There is no doubt that ditch owners would be responsible for wanton injuries or gross negligence, but they are not liable for a mere accidental injury, where no negligence is shown, to a miner locating along the line subsequent to the construction of the ditch. (*Ib.* 340.)

226. The first appropriator of water for mining purposes is entitled to have the water flow without material interruption in its natural channel. (*Bear River and Auburn W. and M. Co. v. New York Mining Co.*, 8 Cal. 333.)

227. Plaintiffs owned certain mining claims and quartz leads on the banks of a stream above the mill and dam of defendant. Defendant commenced raising his dam two feet higher. Plaintiffs brought suit against defendant, alleging that the addition of two feet to defendant's dam was a nuisance, and would back the water on to plaintiffs' claims and thus prevent them from working them, and would also destroy their water privilege for a quartz mill which they intended to construct: *Held*, that the action was premature, and that the demurrer to the complaint, on the ground that the complaint did not state facts sufficient to constitute a cause of action, was properly sustained. (*Harvey v. Chilton*, 11 Cal. 120.)

228. In an action for injuries to a mining claim, a

claim for damages to the plaintiff by reason of the breaking away of the defendant's dam and the consequent washing away of the pay dirt of the plaintiff, may properly be joined with a claim for damages in the preventing plaintiff from working his claim. (*Frayler v. Sears U. W. Co.*, 12 Cal. 558.)

229. The law will not presume an abandonment of property in a dam and ditch for mining purposes from the lapse of time. (*Patridge v. McKinney*, 10 Cal. 183.)

230. Plaintiffs owned certain mining claims in the bed or channel of a stream. Defendants owned claims in the same stream above and adjoining the claims of plaintiffs, defendants' claims being located first. Defendants constructed a flume, running from their own claims to and upon plaintiffs' claims, and through this flume a large quantity of tailings was deposited on plaintiffs' claims, to their great damage. The flume was constructed for the purpose of working defendants' claims; was proper and necessary for that purpose, and the deposit of tailings was occasioned by the ordinary working of the claims. The Court instructed the jury, that the person first locating a claim in the bed of a stream is entitled to the channel below as an outlet, and that when such outlet from the usual mining operations above becomes obstructed, he may open the same; and if he can do so by no other means, may construct a flume down the channel as far as necessary, and as far as it can be constructed without considerable damage to claims subsequently located: *Held*, that the instruction was wrong; that the defendants were not entitled, as matter of strict legal right, to an easement upon plaintiffs' claims for the purpose mentioned; that the doctrine that, under certain circumstances, one person may have a right of way by necessity over the land of another, does not apply to this case; and further, that this Court does not recognize the doctrine that one person can go on the land of another and erect thereon buildings or other structures; and that mining claims stand on the same footing in this respect as other property; that, if the acts of defendants were authorized by any local custom or regulation, its existence should have been

averred and proved. (*Esmond v. Chew*, 15 Cal. 142.)

231. Each person mining in the same stream is entitled to use, in a proper and reasonable manner, both the channel of the stream and the water flowing therein. Where, from the situation of different claims, the working of some will necessarily result in injury to others, if the injury be the natural and necessary consequence of the exercise of this right, it will be *damnum absque injuria*, and will furnish no cause of action to the party injured. The reasonableness in the use is a question for the jury, to be determined by them upon the facts and circumstances of each particular case. (*Ib.*)

232. A prior locator of a mining claim on the banks of a stream has the right to the use of the bed of the stream for fluming or working; and a subsequent erection, which will hinder the working of the claim, is an encroachment upon his rights, and the subject of damages. (*Sims v. Smith*, 7 Cal. 148.)

233. Where parties have acquired the prior right to the use of the water of a stream by the commencement and partial completion of a ditch and flume, they have the right to use so much of the waters of the stream as are necessary to preserve their flume from injury, while in the process of construction. (*Weaver v. Conger*, 10 Cal. 233.)

234. In an action for diverting water from plaintiff's ditch, where both parties claimed, in part, the water of the same stream: *Held*, that defendant is not liable for any deficiency of water in plaintiff's ditch, unless he was diverting from the stream more water than he was entitled to at the time. (*Brown v. Smith*, 10 Cal. 508.)

235. The owners of a ditch are bound to use that degree of care and caution in its construction and management, to prevent injury to others, which men of ordinary prudence would use when the risk was their own. (*Wolf v. St. Louis W. Co.*, 10 Cal. 541.)

236. The failure of one partner in a ditch to pay his proportion of expenses of the concern, does not forfeit his right in the common property. (*Kimball v. Gearheart*, 12 Cal. 27.)

237. Where parties projecting a ditch to convey water, give notice to the world of their intention to dig such ditch and appropriate such water, in the usual manner, and designate the line of such ditch by the usual marks and indications, and pursue the work with a reasonable degree of diligence until the same is completed, they are entitled to such water as against all persons subsequently claiming it. (*Id.*)

238. Surveys, notices, stakes, and blazing of trees, followed by work and labor, without abandonment, will in every case where the work is completed, give title to unclaimed water on public lands over after-claimants. (*Id.*)

239. Plaintiffs are owners of mining claims located in the bed of a creek, and defendants own claims situated on a hill in the vicinity. The refuse matter washed from defendants' claims is deposited on plaintiffs' claims, to such an extent as to render the working of them impracticable. Plaintiffs' claims were first located, and are valuable only for the gold they contain: *Held*, that plaintiffs are entitled to damages for the injury done their claims by such deposit, and to an injunction against the same in future; that the enjoyment of their claims lies in the use necessary to obtain the gold, and that to interrupt this use is to take away the opportunity to enjoy, and defeat the object for which they were located and taken possession of. (*Logan v. Driscoll*, 19 Cal. 623.)

240. The rule *qui prior est in tempore potior est in jure* applies in such cases. (*Id.*)

241. The position that, so long as the use made by defendants of their claims is not in itself unlawful, plaintiffs cannot complain of its effect upon them, is untenable, because no use is lawful which precludes plaintiffs from the enjoyment of their rights. (*Id.*)

Mining Rules, Customs, etc.

242. The question as to the necessity of recording mining claims, reserved. (*Partridge v. McKinney*, 13 Cal. 159.)

243. A copy of a notice posted on a mining claim to

show its extent is not admissible in evidence, if the notice itself be attainable. Such evidence is secondary, and is admissible only upon the terms which control its introduction in other cases. (*Lombardo v. Ferguson*, 15 Cal. 373.)

244. Actual possession of a portion of a mining claim, according to the custom of miners, in a given locality in the Yuba River, extends by construction to the limits of the claim held in accordance with such customs. (*Hicks v. Bell*, 3 Cal. 224.)

245. The code permits evidence of the customs established in mining claims, which implies a permission on the part of the State to the miner to seek wherever he choose in the mines for the precious metals, and extends to him whatever right the State might have to the mineral when found. (*McClintock v. Bryden*, 5 Cal. 100.)

246. The first locator of a quartz ledge is not confined simply to the solid quartz actually embodied in the bed rock, but is entitled to the loose quartz rock and decomposed material which were once a part of the ledge and are now detached, so far as the general formation of the ledge can be traced. (*Brown v. '49 and '56 Quartz Mining Co.*, 15 Cal. 160.)

247. The right of the quartz miner comes from his appropriation, and whenever his claim is defined there is no reason in the nature of things why the appropriation may not as well take effect upon quartz in a decomposed state as any other sort, or why the condition to which natural causes may have reduced the rock, should give character to the title of the locator. (*Ib.*)

248. The only question of fact in this case being, whether the quartz rock—parted or not from its original connection—was a portion of the same quartz ledge or claim taken up by defendant; it was not important whether the rock was upon or beneath the surface, or what its condition, provided it were a part of such ledge or claim. (*Ib.*)

249. In cases of this kind, the custom of miners is entitled to great, if not controlling weight. (*Ib.*)

250. Under certain circumstances, proof of the custom in other districts may be proper—at least, this Court

is not satisfied to the contrary. But in this case, the admission of such testimony, if error, was immaterial, as the case was tried by the Court, and the judgment placed on independent ground, upon which it can stand. (*Ib.*)

251. In the absence of mining regulations, the fact that a party has located a claim bounded by another, raises no presumption that the last located claim corresponds in size, or in the direction of its lines, with the former. (*Live Yankee Co. v. Oregon Co.*, 7 Cal. 40.)

252. Mining laws, when introduced in evidence, are to be construed by the Court, and the question whether by virtue of such laws a forfeiture had occurred, is a question of law, and cannot be properly submitted to a jury. (*Fairbank v. Woodhouse*, 6 Cal. 433.)

253. Work done outside of a mining claim, with intent to work the claim, to be considered by intendment as work done on the claim, must have direct relation and be in reasonable proximity to it. (*Mc Garrity v. Byington*, 12 Cal. 432.)

254. Where the regulations of a mining locality require that every claim shall be worked two days in every ten, the efforts of the owner of a claim to procure machinery for working the claim are, by fair intendment, to be considered as work done on the claim. So, also, is working on adjoining land in constructing a drain to enable the owners to work the claim. (*Packer v. Heaton*, 9 Cal. 568.)

255. One party may locate ground in the mineral districts for fluming purposes, and another party may locate the same ground for mining purposes; the two locations will not conflict, being for different purposes. (*O'Keiffe v. Cunningham*, 9 Cal. 589.)

256. A party may take up a claim for mining purposes, that has been, and still is, used as a place of deposit for tailings by another, and his mining right may be subject to this prior right of deposit; but this claim of the miner will not be subject to those who come after him. (*Id.*)

257. A misdescription in the notice of the claimant to a quartz lead, posted up near the premises, in pursu-

ance of the mining laws of the district in which the lead is situated, and where the lead is under ground and undeveloped, will not vitiate the claim. (*Johnson v. Parks*, 10 Cal. 446.)

258. A book in which claims are recorded by resolution of the miners of a district, may be admitted in evidence in an ejectment suit for a mining claim. (*McGarrity v. Byington*, 12 Cal. 426.)

259. In the absence of any custom or local regulation, the right of property, once attached in a mining claim, does not depend upon mere diligence in working such claim. The failure to comply with any one mining regulation, is not a forfeiture. (*Id.*)

260. The mode of acquiring and the extent of a mining claim must be in conformity to the local rules of miners; but *quere*, can the local regulations alter the general rules of holding property? (*Dutch Flat W. Co. v. Mooney*, 12 Cal. 534.)

261. In suit for mining claims, the Court permitted defendants to introduce in evidence the mining rules of the district, though adopted after the rights of plaintiffs had attached: *Held*, that admitting plaintiff's rights could not be effected by such rules, still, as defendants claimed under them, they were competent evidence to determine the nature and extent of defendant's claim—the effect of such rules upon pre-existing rights being sufficiently guarded by instructions of the Court. (*Roach v. Gray*, 16 Cal. 383.)

262. The quantity of ground a miner can claim by location or prior appropriation for mining purposes may be limited by the mining rules of the district. (*Prosser v. Parks*, 18 Cal. 47.)

263. The mining rules of the district cannot limit the quantity of ground or the number of claims a party may acquire by purchase. (*Id.*)

264. In suit for mining claims, the Court charged the jury, in effect, that possession taken of a mining claim, without reference to mining rules, was sufficient, as against one entering by no better title, to maintain the action; and further, that this possession need not be evidenced by actual inclosure, but “if the ground was

included within distinct, visible, and notorious boundaries, and if plaintiffs were working a portion of the ground within those boundaries," this was enough, against one entering without title: *Held*, that the instruction was right; that though the regular and usual way of obtaining possession of mining claims be according to the mining regulations of the vicinage, still, a possession not so taken is good against one taking possession in the same way; and that the actual prior possession of the first occupant would be better than the subsequent possession of the last. (*English v. Johnson*, 17 Cal. 107.)

265. No acts are required as evidence of the possession of a mining claim, other than those usually exercised by the owners of such claims. A miner is not expected to reside on his claim, nor build on it, nor cultivate it, nor inclose it. He may be in possession by himself, or by his agents or servants. (*Id.*)

266. Going on the lead to work it, or even work done in proximity and in direct relation to the claim, for the purpose of extracting or preparing to extract minerals from it—as, for example, starting a tunnel a considerable distance off, to run into the claim—would be a possession of the claim within the meaning of the rule. (*Id.*)

267. As to the extent of a miner's possession where he enters under a written claim or color of title, his possession, except as against the true owner or prior occupant, is good to the extent of the whole limits described in the paper, though the possession be only of a part of the claim. (*Id.*)

268. Where a claim is distinctly defined by physical marks, possession taken for mining purposes embraces the whole claim thus characterized, though the actual occupancy or work done be only on or of a part, and though the party does not enter in accordance with mining rules, or under a paper title. The rule which applies to agricultural lands, and holds to a more strict interpretation of a *possessio pedis*, does not apply to such a case. (*Id.*)

269. The nature of the possession requisite, when

applied to different kinds of property, as agricultural lands, town lots covered with water, large districts where there is no timber, etc., suggested. (*Id.*)

270. Fences are not requisite around mining claims. The physical marks upon and around the claim are sufficient to notify every one of the possession and claim of the possessor; and by common understanding, the going upon a claim to work it is an appropriation of the entire claim, especially if that claim can be appropriated to that extent by location by one man. (*Id.*)

271. *Query:* Whether, if several distinct claims have been consolidated into one, and the rules of the locality allow but one claim to be taken by one man, and after this consolidation a person should go upon the consolidated claim to work, without authority from the owner, his possession might not be referred to the particular claim upon which he entered, and not to the whole tract; and whether the question might not be one of intent; and whether the presumption would not be, that he meant to appropriate only the quantity allowed by the rules of the vicinage? (*Id.*)

272. In the absence of any mining rule declaring that a failure to record a claim avoids the entry or claim, a party may take actual possession of mineral land, though in taking possession he do not observe the requirements as to registry, and the like acts prescribed by the local laws. But if he take more land than these rules allow, this would not give him title to the excess against any one subsequently entering, who complies with the laws, and takes up such excess in accordance with them. (*Id.*)

273. Miners have the power to prescribe the rules governing the acquisition and divestiture of titles to this class of claims and their extent, subject only to the general laws of the State. (*Id.*)

274. Where plaintiff claims, under purchase and location, a small tract of mineral land, with demarked limits, of which he is in possession, and there is no proof on the trial that the extent of his claim is opposed to the local rules, the presumption is, that his possession is rightful, and not wrongful. (*Id.*)

275. In such case, the plaintiff need not show, in the first instance, that he was in possession in accordance with the local laws; but may (as a vendee under a deed may as to other land) make a *prima facie* case, upon possession; and this is enough until the defendant shows that the possession is wrongful, because in violation of rules which justify him in going upon the premises and working them. (*Id.*)

276. In this case, held, that defendant could not offer in evidence an extract or a single clause of a book containing the mining rules, but must offer the whole book—the book being in Court and in possession of defendant, and it being necessary to a fair understanding of any one part, that the whole should be inspected. (*Id.*)

277. Plaintiffs here—three in number—claiming by purchase and location, defendant offered to show that one of the plaintiffs had admitted, years ago, that he had more than five claims: *Held*, that the evidence was properly ruled out, its relevancy not being shown. (*Id.*)

278. Where the owners of a mining claim, previously located by themselves and others, became incorporated, and placed the corporation thus formed in possession of the claim as their successor in interest, with the evident intention that whatever rights the unincorporated individuals had, should pass to the corporation: *Held*, that the title to the claim passed to the corporation as effectually as it would if the transfer had been accompanied by a conveyance in writing. (*Table M. T. Co. v. Stranahan*, 20 Cal. 198.)

279. Possession of mining ground acquired by an entry under a claim for mining purposes, upon a tract, the bounds of which are distinctly defined by physical marks, accompanied with actual occupancy of a part of the tract, is sufficient to enable the possessor to maintain ejectment for the entire claim, although such acts of appropriation are not done in accordance with any local mining rule. (*Id.*)

280. The exclusion, therefore, of evidence tending to prove a possession of this character, is error. (*Id.*)

281. Although mining ground may be located in the

absence of local regulations, yet the extent of such location is not without limit. The quantity taken must be reasonable; and whether it be so or not, will be determined in such cases by the general usages and customs prevailing upon the subject. If an unreasonable quantity be included within the boundaries, the location will not be effectual for any purpose, and possession under it will only extend to the ground actually occupied. (*Id.*)

282. Upon the question of reasonableness of the extent of a mining location, a general custom, whether existing anterior to the location or not, may be given in evidence; but a local rule stands upon a different footing, and cannot be introduced to effect the validity of a claim acquired previous to its establishment. (*Id.*)

283. So, where G., McB. and others verbally agreed to prospect for quartz, and to be equally interested in claims taken up, and McB. discovered a lead or claim and located it by putting up a written notice with G.'s name and others on it, appropriating the lead: *Held*, that G.'s right attached by these proceedings, and could not be divested by the mere act of McB. in taking down the notice and putting up other notices with other names. (*Gore v. McBrayer*, 18 Cal. 582.)

284. After the notice was put up, G. became a tenant in common of the mine, and not a partner, and could bring an action to vindicate his title against McB. or any one who excluded him or denied his right. (*Id.*)

285. The usual mode of taking up mining claims is to put upon the claim a written notice that the party has located it; and this taking up and giving notice may be done by a party personally, or by any one for him, or with his assent or approval; and whenever the appropriation is made by an agent having authority from a principal to make it, the act is complete, and the title vests in the principal, and the agent by his mere act cannot subsequently divest it. (*Id.*)

286. The fact that mining laws and regulations were passed on a different day from that advertised for a meeting of miners, does not invalidate them. Courts will not inquire into the regularity of the modes in which these

local legislatures or primary assemblages act. They must be the judges of their own proceedings. It is sufficient that the miners agree—whether in public meeting or after due notice—upon their local laws, and that these are recognized as the rules of the vicinage, unless fraud be shown, or other like cause for rejecting the laws. (*Id.*)

Conveyance.

287. A bill of sale, not under seal, is insufficient to convey a mining claim. (*McCarron v. O'Connell*, 7 Cal. 152.)

[The Act of April 13, 1860, p. 22 permits bills of sale of mining claims, without seal, to pass title.]

288. A bill of sale for a mining claim, not under seal, and without warranty, which only purports to convey the right and title of the vendor, will not pass the title, although the vendor is in possession at the time, if such possession is without title. It only passes an equity which is subject to the legal title or a superior equity. (*Clark v. McElry*, 11 Cal. 154.)

289. A written conveyance is not necessary to the transfer of a mining claim. (*Table Mountain Tunnel Co. v. Stranahan*, 20 Cal. 198.)

290. The right to mining ground, acquired by appropriation, rests upon possession only; and rights of this character, not amounting to an interest in the land, are not within the statute of frauds, and no conveyance other than a transfer of possession is necessary to pass them. (*Id.*)

291. The owner of a mining claim has, in effect, a good vested title to the property, until divested by the higher right of his superior proprietor. He is entitled to all the remedies for the protection of his mine that he could claim if he were the owner, against all the world, except the true owner. (*Merced M. Co. v. Fremont*, 7 Cal. 317.)

292. A writing is not necessary to vest or divest title on taking up a mining claim. The right of the miner comes from the mere appropriation of the claim made in accordance with the mining rules and customs

of the vicinage. The title is in the Government, and the right to mine is by its permission to the appropriator. (*Gore v. McBrayer*, 18 Cal. 582.)

293. The statute of frauds, requiring an instrument in writing to create an interest in land, does not apply to the taking up of mining claims. A mere verbal authority to one man to take up a claim for another is sufficient. No title is divested out of the Government, but a right of entry given under it. (*Id.*)

Taxation.

294. The State can levy a poll tax to such extent as it may deem expedient upon all persons engaged in mining upon public lands, and there is nothing in the Constitution of the United States which deprives this State of the power of imposing it. (*People v. Naglee*, 1 Cal. 238.)

295. Where the State passed a law taxing foreign miners until such time as Congress shall by law assume the regulation of the mines, it is not contradictory or repugnant to the power of Congress. (*Id.* 240.)

296. Aliens cannot be said to have any property to enjoy in the mineral public lands by which the Constitution of the State would guarantee them against taxation for working or extracting the metals therefrom. (*Id.* 252.)

297. A tax upon aliens for working the public lands, and extracting therefrom the precious metals, does not require any exaction; the alien may pay or not, depending upon his option whether he will or will not engage in mining operations, and becomes a license fee. (*Id.* 253.)

298. When a foreign miner, subject to a license tax, was employed by one of a partnership to work in the mines which were the partnership's property: *Held*, that the employer, and not the partnership, was liable for the tax. (*Meyer v. Larkin*, 3 Cal. 403.)

299. Where the tax collector levied on the property of the partnership for the tax due by the foreigner thus employed, and sold the whole claim and dispossessed the plaintiff (one of the partners): *Held*, that he was

guilty of a trespass for which the action was properly brought. (*Id.*)

300. The interest of the occupant of a mining claim is property, and is liable to taxation. (*California v. Moore*, 12 Cal. 56.)

301. The Legislature having expressly exempted mining claims from the operation of the Revenue Act, it cannot be presumed that it intended indirectly to tax them by levying a tax on the price paid for them. Money invested in purchasing and opening mining claims is not within that portion of the Revenue Act which provides for taxing "all capital loaned, invested or employed in any trade or business whatsoever. (*Id.*)

302. The fact that the parties in possession of a gold mine are foreigners, and have obtained no license, affords no apology for trespassers. The State alone can enforce the law prohibiting foreigners from working in the mines without a license. (*Mitchell v. Hagood*, 6 Cal. 148.)

APPENDIX.



FORMS.

CERTIFICATE OF INCORPORATION.

STATE OF CALIFORNIA, }
County of }

We, the undersigned, being desirous of forming a corporation for the purpose of mining, do hereby certify and declare as follows, viz.:

First.—That we do hereby form such corporation under and in pursuance of the laws of the State of California.

Second.—That said corporation shall be known by the name of the “ Mining Company.”

Third.—That the object of said corporation shall be to carry on and conduct the business of mining on a certain vein or lode situate and recorded in the Mining District, County, State (or Territory) of

Fourth.—That the amount of the capital stock of said corporation shall be dollars, which shall be divided into shares of dollars each.

Fifth.—That said corporation shall exist for the term of years.

Sixth.—That the principal place of business of said corporation shall be located in the of, County of, State of California.

Seventh.—That the number of Trustees who shall manage the concerns of said corporation shall be, and the names of the Trustees who shall manage its concerns for the first three months are

In witness whereof, we have hereunto set our hands and seals, this day of A. D. 186...

[Names.]

TRUST DEED.

THIS INDENTURE, made this.....day of.....in the year of our Lord one thousand eight hundred and sixty-.....between the undersigned, parties of the first part, and.....Trustees of the.....Mining Company, parties of the second part: *Witnesseth, that whereas*, the said.....Mining Company has been duly incorporated under the laws of the State of California; *and whereas*, the said parties of the first part, the present owners of the mining ground or lode hereinafter described, are desirous of transferring to said corporation all the right, title, and interest which they and each of them have or claim therein.

Now, therefore, know all men by these presents, that the undersigned, parties of the first part hereto, and each of them, for and in consideration of the sum of one dollar to them, jointly and severally, in hand paid, at or before the execution and delivery of these presents, the receipt whereof is hereby acknowledged, and for the further consideration of certificates of stock in said.....Mining Company, hereafter to be issued to them, and each of them, their heirs and assigns, in proportion to their several interests as hereinafter mentioned, in conformity with the provisions of an Act of the Legislature of the State of California, entitled "An Act to provide for the formation of Corporations for certain purposes," passed April 14th, 1853, and the several acts amendatory thereof and supplemental thereto, and in accordance with the By-Laws of said.....Mining Company, do hereby grant, bargain, sell, and convey unto the said.....Trustees of said.....Mining Company, and their successors, all the right, title, and interest, possession, claim, and demand, whatsoever, as well in law as in equity, of said parties of the first part, and each of them, of, in, and to all that certain mining ground, or lode, situate, lying, and being in.....Mining District,.....County, State (or Territory) of.....known as the.....

Together with all the dips, spurs, and angles of said mining ground,

or lode, and all and singular the tenements, hereditaments, appurtenances, and privileges thereunto belonging.

To have and to hold the same, and every part thereof, with the appurtenances and privileges thereunto belonging unto the said.....

.....Trustees of the said.....
Mining Company, and their successors forever; in trust, nevertheless, and to and for the uses and purposes of said Company, as by the laws of the State of California and the By-Laws, Rules, and Regulations of said Company provided.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

[Feet.]

[Names.]

| [L.S.]

BY-LAWS.

ARTICLE I.

NAME AND CAPITAL STOCK.

This Company shall be known as the “ Mining Company,” and shall have a capital stock of dollars, which shall be divided into.....shares of.....dollars each.

ARTICLE II.

CORPORATE POWERS.

The corporate powers of this company shall be vested in a Board of Trustees, and the officers of the company shall be a President, Secretary, and Treasurer.

ARTICLE III.

MEETINGS OF STOCKHOLDERS.

The annual meeting of stockholders for the election of Trustees and transaction of other business, shall be held at.....on the.....of each year. Notice of all meetings of stockholders shall be given by publication once a week for four weeks in some daily newspaper published in....., or by special notice from the Secretary to each stockholder. No meeting of the stockholders shall be competent to transact business unless a majority of the stock is represented. In case a majority of the stock is not represented at the annual meeting, a similar notice shall be published or given by the Secretary calling another meeting within thirty days thereafter. Each share of stock shall be entitled to one vote, and each vote may be cast by proxy at all meetings of the stockholders. The proxy shall be in writing and filed with the Secretary.

ARTICLE IV.

TRUSTEES.

The Trustees elected at the first annual meeting of the stockholders shall serve for one year, and until their successors are elected. Their term of office shall commence immediately after their election. Vacancies in the Board of Trustees shall be filled by the other Trustees in office within thirty days after such vacancy shall occur, and the person so elected shall hold office until the next annual election thereafter. No person who is not at the time of the election an owner of stock in the company, standing in his own name on its books, shall be eligible to election as a member of the Board of Trustees.

The Trustees shall present a full statement at the annual meeting of the stockholders showing in full and in detail the assets and liabilities of the company, and the general condition of its affairs. They shall call a meeting of the stockholders, and present at the meeting a similar report whenever so requested in writing by stockholders representing.....of the whole number of shares.

The Board of Trustees shall have power to call meetings of the stockholders whenever they deem it necessary. To appoint and remove at pleasure all officers, agents, and employés of the company, and to prescribe their duties, fix their compensation, and require security for faithful service. To make rules and regulations not inconsistent with the laws of the State of California, or the By-Laws of the company. To declare dividends out of the surplus profits of the company whenever they may deem it advisable. To levy such assessments as in their opinion may, from time to time, be necessary for the purposes of the company; *provided*, that no assessments shall be levied exceeding.....dollars per share in any one month. To make all contracts which in their judgment will subserve the interests of the company; and the signatures of the President and Secretary to any contract or obligation, when authorized by a vote of a majority of the Trustees, shall be valid and binding upon the company. To incur such indebtedness as they may deem necessary; *provided, however*, that no debt exceeding.....dollars shall be contracted on behalf of the company, except with the express stipulation that the stockholders shall not be held liable in their individual capacity; *and provided further*, that the debts of the company shall not at any time exceed in the aggregate the sum of.....dollars.

It shall be the duty of the Trustees to cause to be kept a complete record of all their official acts, and full minutes of the proceedings of all meetings of the Board and of the stockholders. To require the Secretary and Treasurer to keep their books and accounts in a proper

manner. To cause to be issued to the stockholders, in proportion to their respective interests, certificates of stock; *provided* that the aggregate amount of the certificates so issued shall not exceed the capital stock of the company.

At the first meeting of the Board of Trustees they shall select one of their number to act as President, and elect a Secretary and Treasurer.

ARTICLE V.

PRESIDENT.

The President shall preside at all meetings of the Trustees and of the stockholders. He shall sign as President all certificates of stock, and all contracts and other instruments of writing which have been first approved by the Board of Trustees, and affix the corporate seal to all instruments requiring a seal. He shall draw all warrants on the Treasurer. He shall have the casting vote at all meetings of the stockholders or Trustees. He may call a meeting of the Trustees or stockholders whenever he shall deem it necessary, and shall have, subject to the advice of the Trustees, direction of the affairs of the company. In case of his absence or inability, from any cause, to discharge the duties of the office, the vacancy may be filled by the remaining members of the Board, permanently or temporarily, as the circumstances may require, and the person so elected shall be vested with all the powers of the office.

ARTICLE VI.

TREASURER.

The Treasurer shall safely keep all moneys and bullion belonging to the company, and disburse the same under the direction of the Board of Trustees and in conformity with the By-Laws of the company. At each annual meeting of the stockholders, and as often as may be required by the Board of Trustees, he shall present a full statement of his accounts, with proper vouchers. He shall make no payment except on a warrant drawn by the President, and countersigned by the Secretary. He shall discharge such other duties as pertain to his office, and as may be prescribed by the Board of Trustees.

ARTICLE VII.

SECRETARY.

The Secretary shall keep a full record of the proceedings of the Trustees and of the stockholders. He shall keep the book of blank certificates of stock, fill up and countersign all certificates issued, and make the proper entries in the margin of such book on the issuance of certificates. He shall cancel all certificates surrendered to him

before issuing new certificates in lieu thereof, and shall preserve the certificates so surrendered and canceled as vouchers. He shall keep a transfer book, and a stock ledger in debit and credit form showing the number of shares issued to and transferred by any stockholder, and the dates of such issuance and transfer. He shall countersign all warrants drawn on the Treasurer, keep proper account books, and perform such other duties as pertain to his office, and as are prescribed by the Board of Trustees.

The books of the Secretary, and such papers as may be placed on file by vote of the Trustees or stockholders, shall at all times during business hours be subject to the inspection of any stockholder.

ARTICLE VIII.

SUPERINTENDENT.

A general Superintendent shall be elected by the Board of Trustees, and be removable at their pleasure. It shall be the duty of such Superintendent to reside at the mine of the company, and take charge of all property there belonging to the company, and control and direct all labor and business pertaining to the interests, object, and operation of the company in....., subject, however, as far as practicable, to the advice of the Trustees residing there, and entirely subject to the direction and control of the Board of Trustees. He shall make monthly returns to the Board of Trustees of all persons employed by the company, their wages and time employed, and shall present therewith a statement of all expenditures made by him, and his vouchers therefor, (duplicates of which shall be kept by him) and he shall also report the general condition of the mining work; should he require funds, he shall make a requisition on the Board of Trustees therefor, stating the precise objects for which they are required. If approved by the Board of Trustees, the money shall be transmitted to him in such mode as they may direct, or he may provide funds by the sale of ore or bullion if so authorized by the Board of Trustees.

ARTICLE IX.

CERTIFICATES OF STOCK.

Certificates of stock shall be of such form and device as the Board of Trustees may direct. Each certificate shall be signed by the President and countersigned by the Secretary, and bear the seal of the company, and express on its face its number, date of issuance, the number of shares for which, and the person to whom it is issued. Several certificates may be issued to the same person, provided that in the aggregate they do not exceed the number of shares belonging to such person. The certificate book shall contain a margin in which shall be entered the date, number of shares, and name of the person

expressed in the corresponding certificate. No certificates of stock shall be delivered by the Secretary until the person entitled thereto shall have signed the By-Laws of the company.

ARTICLE X.

TRANSFER OF SHARES.

Shares in the company may be transferred at any time by the holder thereof, or by attorney legally constituted, or by their legal representatives, but no transfer shall be valid except as between the parties thereto, until the surrender of the certificate and acknowledgment of such transfer on the books of the company.

No transfer of any share shall be valid upon which any assessments are then due and unpaid, or if the holder thereof is indebted to the company on any account whatever, until such account or debt is paid, or arranged to the satisfaction of the Board of Trustees.

ARTICLE XI.

COMPENSATION.

Neither the President, Treasurer, nor any member of the Board of Trustees, as such, shall receive compensation for their services. Reasonable traveling expenses shall be allowed by the Trustees to the President, or other member of the Board, engaged, by authority of the Board of Trustees, in the business of the company.

The Superintendent and Secretary shall respectively receive such compensation for their services as the Board of Trustees may from time to time determine.

ARTICLE XII.

VALIDITY OF CONTRACTS.

No contract by any officer of the company, other than for work and labor done and materials furnished, shall be valid without the previous approval or subsequent ratification by the Board of Trustees.

ARTICLE XIII.

AMENDMENTS.

These By-Laws may be altered or amended at any meeting of the stockholders by a vote of two-thirds of all the shares in the company; or they may be altered or amended at any meeting of which notice has been given by publication, once a week for four weeks, in some daily newspaper published in.....by a majority vote of all the shares.

POWER OF ATTORNEY

TO RECEIVE CERTIFICATES OF STOCK.

Know all men by these presents that I,, do hereby make, constitute, and appoint.....my true and lawful attorney, for me and in my name, place, and stead, to receive certificates for.....shares of the capital stock of the.....Mining Company, to be issued in the name of, and to sign and execute all necessary papers to that end; hereby ratifying all lawful acts of my said attorney done by virtue hereof.

Witness my hand and seal, at, this....day of,
A. D. 186 .

Witness:

[L.S.]

POWER OF ATTORNEY

TO VOTE AT A MEETING OF STOCKHOLDERS.

Know all men by these presents that I,, do hereby make, constitute, and appoint.....my true and lawful attorney, for me and in my name, place, and stead, to vote as my proxy at.....meeting of the Stockholders of the.....Mining Company.....according to the number of votes to which I should be entitled if personally present; with full power of substitution and revocation.

Witness my hand and seal, at, this....day of,
A. D. 186 .

Witness:

[L.S.]

[If this proxy is used at an election of officers a ten cent Revenue Stamp must be affixed.]

INDEX TO STATUTES.

[THE NUMBERS REFER TO SECTIONAL PARAGRAPHS.]

ACTIONS against stockholders.....	16
evidence in.....	16, 18, 28
ALPHABETICAL LIST OF STOCKHOLDERS shall be kept.	18, 28
what shall be shown thereby.....	18, 28
shall be kept open for inspection	18, 28
stockholders or creditors may make extracts there- from.....	18, 28
such book or certified copy therefrom shall be evi- dence in actions.....	18, 28
penalty for neglect to keep, in a proper manner..	19, 29
ASSESSMENTS. Notice of, how shall be given.....	10, 30
<i>Under Act of March 5th, 1861.</i> Sales of stock for de- fault in payment of..	10
to what amount may be levied.....	30
notice of, how shall be given.....	30
sales of stock for non-payment of.....	30
BY-LAWS. Power of corporations to make	3
to provide for filling vacancies in Board of Trustees	5
shall be entered at length in a book	28
CANAL COMPANIES. For what purposes may be formed..	31
rights granted to.....	32
power of.....	33
shall construct and repair bridges	34
CAPITAL STOCK. Shall be stated in certificate	2
shall not be reduced except as prescribed	13
distribution of, upon dissolution	13
debts not to exceed amount of, paid in	14
may be increased or diminished.....	20
before diminished excess of debts to be satisfied	21
manner of increasing or diminishing.....	21
CERTIFICATE OF INCORPORATION. Number of persons to sign.....	2
what shall be stated therein	2
certified copy of, to be filed	2
certified copy of, shall be received in evidence.....	3

CERTIFICATE OF PROCEEDINGS shall be filed when capital is increased, etc.....	22
how, shall be made	22
what shall be shown thereby	22
on petition for dissolution.....	24
what shall be stated therein	24
CERTIFIED COPY of certificate of incorporation shall be filed	2
shall be received in evidence	3
of list of stockholders, etc., may be demanded....	18, 28
shall be evidence of facts stated.....	18, 28
CONVEYANCES OF MINING CLAIMS (Act of April 13th, 1860). What may be evidenced by	39
need not be under seal.....	39
must be accompanied by delivery of possession.....	39
or must be acknowledged and recorded	39
limitation of act to gold mining claims repealed	40
CORPORATIONS (under Act of April 14th, 1853). For what purposes may be formed.....	1
liabilities of	1, 27
powers of	4, 15
debts of, shall not exceed paid-in capital.....	14
penalty of, for neglect to keep list of stockholders	19, 29
settlement of affairs on dissolution of.....	23
manner of dissolution of.....	24
CREDITORS. When trustees are individually liable to.....	14
may inspect list of stockholders	18
DEBTS. Trustees individnally liable for excess of.....	14
shall be satisfied before capital is reduced	20
to be settled by trustees after dissolution	23
DISSOLUTION OF CORPORATION.....	23, 24
DIVIDENDS shall not be made except from surplus profits .	13
ELECTION OF TRUSTEES. Manner of conducting	5
EVIDENCES OF DEBT shall not be issued to circulate as money	15
EXECUTOR, Administrator, etc., may represent stock	11
liability of	17
GROWING CROPS, etc., (Act of April 25th, 1855). Owners of, protected	36
penalty for violation of act concerning	38
IMPROVEMENTS. Meaning of word, as construed by Act of April 25th, 1855	37
LAND. Quantity of, authorized to be held.....	1
LIABILITIES (under Act of April 14th, 1853) of corporations	1, 27
of trustees	13, 14
of stockholders.....	16
of person pledging stock.....	17
of executor, administrator, etc.....	17
MINERAL LAND. Agricultural corporations not allowed to hold	1
occupied by growing crops, etc., how may be used..	37
may be worked after crops are harvested.....	38

NOTICE of first meeting of trustees.....	8
of assessments (Act of April 14th, 1853).....	10
of meeting to increase or diminish capital.....	21
of petition for dissolution.....	24
of assessments (Act of March 5th, 1861).....	30
POWERS OF CORPORATIONS.....	4, 15
who shall be exercised by.....	5
REPRESENTATION OF STOCK held by executor, etc.....	11
when pledged.....	12
RESOLUTIONS AND ORDERS. How, shall be entered.....	28
SALE OF STOCK for non-payment of assessments	10, 30
SECRETARY. Penalty for neglect, etc.....	19, 29
to make affidavit to proceedings	22
STOCK shall be deemed personal estate.....	9
how, shall be transferred.....	9
transfer of, not valid until entered on the books.....	9
sale of, for non-payment of assessments.....	10, 30
how, shall be sold.....	10, 30
how, may be pledged.....	12
held by executor, administrator, etc.....	11
person pledging, shall be considered owner.....	17
STOCKHOLDERS. Liability of.....	16
actions may be instituted against	16
property to be divided among, after dissolution	23
alphabetical list of, shall be kept	18, 28
evidence for and against, in actions.....	16, 18, 28
meeting of, to increase or diminish capital.....	21
TRANSFER OF STOCK.....	9
TRUSTEES. Vote necessary to remove.....	4
vote necessary to elect.....	5
number composing board of.....	5
qualifications necessary.....	5
when, shall be elected	5
vacancy in board of, how filled	5
failure to elect, on day designated.....	6
acts of, valid until successors elected.....	6
majority of, shall form a board	7
decision of majority of, assembled valid	7
how first meeting of, shall be called.....	8
powers of, relative to assessments.....	10
shall not make dividends except as provided	13
shall not withdraw or divide capital stock.....	13
when, are individually liable.....	13, 14
cause dissent, etc., to be entered on the minutes..	13, 14
shall cause list of stockholders to be kept.....	18, 28
shall sign notice of meeting to increase or diminish capital stock	21
shall certify proceedings of such meeting.....	22
power of, upon dissolution of corporation.....	23
VOTES. Number of, to which stockholders are entitled ...	5
number of, necessary to elect trustees.....	5
number of, necessary to increase the capital.....	21
number of, necessary to dissolve corporation	24

INDEX TO DECISIONS.

[THE FIGURES REFER TO THE SECTIONAL PARAGRAPHS.]

BY-LAWS. For what purposes, may be made.....	76
violation of provisions of, by Trustees....	114, 115, 119
CERTIFICATE OF INCORPORATION. Corporations have a	
legal existence from date of filing.....	44
filing of duplicate, with Secretary of State.....	45
statement in, of "place of business.".....	46
CONVEYANCE OF MINING CLAIMS. As to necessity of seal	
upon.....	287, 288, 289, 290
not necessary to be by instrument in writing... ..	289, 290, 292, 293
to a corporation.....	278
CORPORATION must show a compliance with the statute...	41
omission of necessary steps will be fatal.....	42
as to other acts, responsible only to the Government.	43
has a legal existence from date of filing certificate..	44
first established has no exclusive privileges.....	65
when bound to pay debts of old corporation.....	66
authority of President to bind.....	67
acts of, may amount to a ratification of a contract...	67
may bind itself by note and mortgage.....	68
power of, to sell shares for non-payment of assess-	
ments	69
conveyance made by.....	70, 71
seal of.....	74
when bound by acts or admissions of its members...	78
cannot hold as joint tenant.....	85
what powers may be exercised by.....	84, 86
in reference to contracts, treated as a private person..	87, 88, 99
where a power is conferred upon, and mode of its	
exercise prescribed.....	90, 91
dissolution of.....	106, 107, 108, 116
may be sued by a member.....	109
law governing members of.....	110
power of removing officers of.....	112, 113
liability of officers of.....	117, 119

CORPORATION. Jurisdiction over, by a Court of Equity..	118
liability of members of.....	120, 121, 122
power of, to sue.....	125
duty of, as to answer in suit.....	126
conveyance to, by owners of mining ground.....	278
<i>Actions against</i> , on note.....	64
on an implied contract for services as Secretary.....	97
where decree directed sale of interests of individuals not parties to suit.....	100
to restrain the issuing of bonds.....	101
where one defendant pleads that he is not a member of the company.....	102
who are required to be made parties in.....	101, 103
who shall be served with summons in.....	104, 127, 128
Sheriff's return on summons in ...	104, 105
by a member of the corporation.....	109
by a stockholder, for a settlement of its affairs.	111, 114
competency of witnesses in.....	52, 96, 122, 123, 124
<i>Actions by</i> , for possession of land necessary.....	73
admission in evidence of certificates of stock.....	179
<i>Liability of</i> , to pay debts of an old corporation.....	66
on contracts made by President, etc.....	67, 83
on note and mortgage.....	68
on promissory note which provides that property of stockholders shall not be liable.....	77
a corporate act not essential in all cases.....	79
where contract has been executed.....	80
for payment of debts contracted by agent.....	82
<i>Powers of</i> , to issue bills and notes.....	62, 64, 72, 76
who may be exercised by.....	63
to sell shares for non-payment of assessments.....	69
to make contracts and create debts.....	74, 75
to make By-Laws.....	76
what power may be exercised.....	84, 86
to sue.....	125
DAM may be reduced or abated to prevent overflow.....	221
action for raising, when premature.....	227
action for damages caused by breaking of, etc.....	228
the law will not presume an abandonment of.....	229
DITCH OR CANAL. Competency of witness in action for diversion of water from.....	206
when owners are responsible for injuries caused by breaking of.....	224, 225
law will not presume an abandonment of property in	229
use of water of stream for, while in process of con- struction.....	233
where two parties claim in part water of the same stream for.....	234
care necessary to be used by owners of, to prevent in- jury.....	235
failure of one partner to pay his proportion of ex- penses.....	236
notice of intention to dig.....	237

DIVIDEND. When, declared after conditional transfer....	61
DRAFT. Where no notice of presentation and non-payment of, is necessary.....	81
LOCATION of quartz ledge, rights of locator.....	246, 247
of same ground for different purposes.....	255, 256
misdescription in notice of.....	257
quantity claimed by, may be limited by mining rules	262
quantity taken by, must be reasonable.....	281, 282
of quartz lead by one person for another..	283, 284, 285
MINING CLAIMS must taken subject to prior rights.....	145
defined.....	151
title and possession of..	164, 165, 166, 167 180, 182, 211, 244, 265, 266, 267, 268, 269, 274, 275, 279, 280, 291
must be defined as to limits.....	165
damages for entry upon.....	168
grant of, presumed to first appropriator.....	160, 171
location of.....	180, 189, 257
competency of witnesses in action for recovery of	150, 184
when writ of injunction will lie to restrain trespass in entering on.....	185, 186
abandonment of.....	183, 208, 209, 214
jurisdiction of.....	187, 188, 190, 191
bill of sale of, how may be proven.....	196
unlawful entry of Sheriff upon.....	195
what are fixtures on.....	197
competency of witnesses in action of trespass for entering upon.....	198
liability of purchaser of, on contracts previously made	201
evidence in justification of killing another while in the act of injuring a	202
boundary line of.....	203, 204, 251
taking possession of, under an agreement.....	205
title acquired by purchaser of.....	207
title to, when subsequently acquired by vendor.....	194
parties defendant in action for the recovery of an in- terest in.....	210
interest in, is property and liable to be sold under ex- ecution.....	212, 222, 300
tailings from	213, 214, 215, 216, 217, 230, 239, 240, 241
right to, acquired at date of location.....	224
right of owner of, on stream as to use of channel and water.....	230, 231, 232
question as to necessity of recording, reserved.....	242
admission in evidence of notice posted on.....	243
when work done outside of, may be considered as work done on.....	253, 254, 266, 268
record of, may be admitted in evidence.....	258
local rules concerning the acquiring and extent of..	260, 261, 262, 263, 271
taking possession of, without reference to mining rules	264
power of miners to prescribe rules governing.....	273
conveyance and transfer of	287, 288, 289, 290, 292, 293

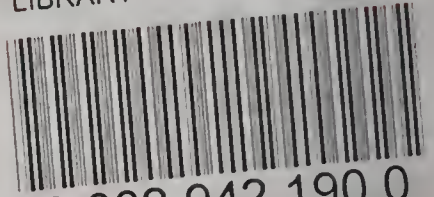
MINING CLAIMS. Failure to record.....	272
what constitutes evidence of possession of.....	270
written conveyance not necessary to transfer of.....	289, 290, 292, 293
taxation of.....	300, 301
MINING COMPANY. Liability of members of.....	192, 193
MINING LAWS, ETC. When introduced in evidence to be construed by the Court.....	252
as to failure to comply with.....	259
as to working of claims.....	254, 259
as to the acquiring and extent of claims..	260, 261, 262, 263
as to admission of, in evidence.....	261, 276
may limit the quantity of ground that may be located	262
cannot limit the quantity that may be purchased....	263
power of miners to prescribe.....	273
passage of, by miners.....	286
NOTICE posted on mining claim, admission of, in evidence.	243
of location, misdescription in.....	257
PRIVATE LANDS. Miner has no right to enter upon.	162, 170, 172
when injunction will lie to prevent damage to..	199, 200
PUBLIC LANDS. (Agricultural and mineral.) Mines upon, may be worked.....	129, 142, 144
rights of agriculturist to, must yield to the rights of the miner.....	129, 130, 143
right of miner to dig ditch through.....	131
right of entry upon, for purpose of mining....	132, 133, 134, 135, 136, 137, 138, 139, 140, 158, 163, 174
preëmption claimant upon.....	141
settlers may occupy, except in mining regions.....	146
right of ownership to, not asserted by Government..	148
transfer of right of possession of.....	152
claims to, regarded as titles.....	153
license to work mines upon.....	154, 155, 162
location of seminary land.....	157
location of school land warrants.....	173
title and possession of.....	163, 164, 176, 274, 275
how miner may justify entry upon....	175
right of property in the mines on.....	218, 219
the State can levy a poll tax upon all persons engaged in mining upon.....	294
foreign miners liable to license tax for working upon	295, 296, 297, 298, 299
QUARTZ LEDGE. What the locator of, is entitled to.	246, 247, 248
when located in name of another.....	283, 284, 285
RIGHTS OF MINERS to dig ditch through public lands....	131
to enter upon mineral lands.	132, 133, 134, 135, 136, 137, 138, 139, 140
to dig for gold on public lands..	129, 130, 143, 144, 145, 147, 149, 156, 158

RIGHTS OF MINERS to mine carries with it other rights	158, 159
to remove gold restricted to public lands.....	161, 162
to pay dirt and tailings.....	213
to appropriate place for deposit of tailings	215
to protect mining ground from injury by obstruction of water	222
to be protected in their possession.....	223
to the use of channel of stream and water.	230, 231, 232
STOCK. When attached under judgment against vendor..	49
purchaser of hypothecated, at Sheriff's sale.....	59
when pledged as security.....	58
sale of, for non-payment of assessments.....	69
may be voted at election by surviving partner....	92, 93
may be represented at meetings by true owner....	94, 95
<i>Assignment and transfer of</i> , must be made on the books of the company.....	47, 57
when held by a married woman.....	48
when attached under judgment against the vendor...	49
refusal of company to transfer on ground of indebted- ness of vendor.....	50
as security for a loan.....	51
as security for a note.....	53, 58
as security for a debt.....	54
conditional clause in transfer.....	55
mere default of payment of debt does not give abso- lute title.....	56
dividend declared after.....	61
STOCKHOLDER. Competency of, as a witness.....	52, 96, 122, 123, 124
may sue corporation.....	109
may sue corporation for an account.....	119
liability of.....	120, 121, 122
SURVIVING PARTNER has a right to vote stock at an elec- tion.....	92
may vote stock standing in name of deceased partner	93
TAILINGS are the property of the miner.....	213
evidence of abandonment of.....	214
miner may appropriate ground for place of deposit of	215
evidence of intention to appropriate ground for place of deposit of.....	215
when allowed to mingle with those of other miners..	216
when allowed to flow upon the ground of another...	217, 230, 239, 240, 241
TAXATION. Poll tax may be levied upon all persons en- gaged in mining.....	294
of foreign miners.....	295, 296, 297
employer liable for payment of foreign miner's license	298, 299
of mining claims.....	300, 301
that a foreigner has no license is no apology for tres- passers.....	302
TRUSTEES. Liability of.....	115, 117, 119

USAGE, CUSTOM, ETC., of a corporation as to compensation	
of Secretary.....	97, 98
when an answer is insufficient in not setting forth...	220
in given locality as to possession.....	244
as to permission to the miner to search for the precious	
metals.....	245
as to the right of first locator of quartz ledges.....	249
as to proof of, in other districts.....	250
as to location.....	251, 281, 282
as to working of claim.....	254, 259
WATER. Obstruction of, in a ravine.....	222
first appropriator of, for mining purposes.....	226
right of miner on stream to the use of.....	231
right to the use of, for a ditch and flume in process	
of construction.....	233
what constitutes title to.....	238
WATER PRIVILEGES, ETC. Grant of, presumed to the first	
appropriator.....	160, 171

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